Department Of Law

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• By the Students • Of the Students • For the Students

3RD SEMESTER TORTS

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About the Committee

The Academic Committee of the Department of Law at the University of Calcutta is a newly formed body established in the month of September, 2024, comprising dedicated students from all 5 years of the BA LLB program. This diverse committee is designed to foster a collaborative academic environment, drawing on the unique perspectives and experiences of its members to enhance the educational journey of the students.

With a total of 12 members, including two Joint Secretaries, the committee operates under the auspices of the Student Unit (TMCP) of Department of Law, University of Calcutta. Its primary mission is to develop comprehensive study materials and notes that cater to the specific needs of law students, ensuring they have access to essential resources for their academic success.

In addition to creating study materials, the committee is committed to provide valuable support through organized online doubt-clearing sessions and compiling lists of important exam questions. By engaging students from various academic years, the committee aims to create a vibrant community that encourages knowledge sharing and academic excellence across all levels of the BA LLB program. Through these initiatives, we aspire to empower students and enhance their understanding of legal concepts, preparing them for both examinations and future careers in law.

Objectives Of the Committee

The Academic Committee of the Department of Law at the University of Calcutta is dedicated to enriching the academic experience of BA LLB students through several key initiatives. A primary focus is developing comprehensive study materials, including high-quality, well-researched notes covering essential topics in the BA LLB curriculum. This ensures students have valuable resources to support effective learning and exam preparation.

To aid examination success, the committee curates and distributes a list of important questions and topics, helping students focus on critical areas and improve performance. Regular online doubt-clearing sessions further support students by providing a platform to clarify course content, ask questions, and engage in discussions on complex legal concepts.

The committee also emphasizes practical learning through workshops and seminars with legal professionals, offering insights into the legal field and connecting theoretical knowledge to real-world applications. Additionally, fostering a collaborative academic community is a priority, encouraging knowledge sharing and support among students across different years.

Looking ahead, the committee plans to introduce new initiatives such as guest lectures and legal research projects to further enhance the academic experience and prepare students for future careers in law.

Acknowledgement

The Academic Committee of the Department of Law at the University of Calcutta extends its heartfelt gratitude to all those who have supported the establishment and ongoing efforts of this committee. We would like to express our sincere appreciation to the University of Calcutta for providing a conducive environment for academic growth and innovation.

We are especially thankful to the Student Union members, ***Surya Jyoti Sarkar*** *(President) and* ***Ananda Biswas*** *(General Secretary) for their unwavering support and guidance, which has been instrumental in facilitating our operations and ensuring that student voices are effectively represented in our initiatives.*

We also appreciate the enthusiasm and commitment shown by our Committee Secretaries - ***Anandita Nandy and Dipshikha Bhandari*** *of 7th Semester and Executive Members – 9th Semester-* ***Ridhikamini Basu Mallick,*** *7th Semester -* ***Ritisha Majumder, Maitreyee Roy****, 5th Semester -* ***Anu Mondal, Manami Pramanick, Supriti Murmu****, 3rd Semester –* ***Diksha, Krishna Thakur, Pragya Shukla, Arkodyuti Pramanick, Debapriya Dutta*** *in working collaboratively to enhance the academic environment for law students. Together, we aim to create a vibrant learning atmosphere that prepares students not only for examinations but also for their future careers in law.*

Disclaimer

The notes mentioned in the pdf are prepared for assistance of students in the Department of Law, Calcutta University. They are aimed at supplementing the efforts of students. Students are sincerely advised to attend classes and study by themselves, using these notes only as a means of reference to enhance their knowledge for examinations. This Committee does not condone missing classes or forsaking of own research for academic purposes.

Law Of Torts

1. Explain the maxim damnum sine injuria and injuria sine damnum with the help of decided cases.

Introduction

The law of torts is a collection of all the circumstances in which a court gives a remedy by way of damages, for legally unjustified harm or injury done by one to another person. There are three elements which need to be proved before constituting a tort.

i. There must be an act or omission on the part of the defendant
ii. That act or omission should be in violation of a legal right vested in the plaintiff
iii. The wrongful act or omission thus done by the defendant is of such a nature to give rise to a legal remedy.

Both the maxims are divided into three parts as follows:

- Damnum/Damno means substantial harm, loss or damage with respect to the money, health, etc
- Injuria means an infringement of a right given by the law to the plaintiff
- Sine means without.

These 2 maxims fall under the category of qualified rights, & in the cases of qualified rights there is no presumption of damages and the violation of such rights is actionable only on the proof of damages.

DAMNUM SINE INJURIA

Damnum sine Injuria is a legal maxim which refers to damages without injury or damages in which there is no infringement of any legal right which are vested with the plaintiff. Since no legal right has been infringed, so no action lies in the cases of damnum sine injuria. The general principle on which this maxim is based is that if one exercises his common or ordinary rights, within reasonable limits, and without infringing other's legal right, such an exercise does not give rise to an action in tort in favour of that other person. Damages can be in any form either in the form of any substantial harm or loss suffered from respect to the money, comfort, health, etc.

It is an implied principle in law that there are no remedies for any moral wrongs, unless and until any legal right has been infringed. Even if the act or omission such done by the defendant was intentional, the Court will not grant any damages to the plaintiff.

As was cited in the case of ***Mayor & Co. of Bradford vs. Pickles (1895)*** in which the corporation of Bradford filed a suit against the defendant alleging that the act of defendant by digging a well in the adjoining land owned by the defendant has cut the underground supply of water in the corporation's well hence causing them monetary losses since there was no adequate supply of water to discharge for the people living under the jurisdiction of the corporation. It was held that the defendant is not liable since they had not violated any legal right of the plaintiff

In another case of ***Gloucester Grammar School (1410)*** in which a schoolmaster, set-up a rival school to that of the plaintiff and since because of the competition the plaintiff had to reduce their fees from 40 pence to 12 pence per quarter Thus claimed for compensation from the defendants for the losses suffered. It was held that the plaintiff had no remedy for the losses suffered, since the act, though morally wrong has not violated any legal right of the plaintiff.

The court presumes in cases where the legal night has been infringed that damages have to be awarded, but in cases where no legal right has been infringed, the maxim Damnum sine Injuria applies & no remedies are available for the same. So, it can be rightly said that an act which is lawfully or legally done, without negligence, & in the exercise of a legal right, such damages as comes to another thereby is damage without Injury

INJURIA SINE DAMNO

Injuria sine damno is a violation of a legal right without causing any harm, loss or damage to the plaintiff and whenever any legal right is infringed, the person in whom the right is vested is entitled to bring an action. Every person has an absolute right to his property, to the immunity of his person, and to his liberty & infringement of this right is actionable per se a person against whom the legal right has been infringed has a cause of action such that even a violation of any legal right knowingly brings the cause of action. The law even gives the liberty that if a person merely has a threat of infringement of a legal right even without the injury being completed, the person whose right has been threatened can bring a suit under the provisions of Specific Relief Act under Declaration and injunction.

For Example. If a person is wrongfully detained against his will, he will have a claim for substantial damages for wrongful imprisonment even if no consequential loss was suffered due to the detention

As was cited in the case of ***Ashby v. White***[1] wherein the plaintiff was a qualified voter at the parliamentary elections which were held at that point of time. The defendant, a returning officer wrongfully refused to take the plaintiff's vote. The plaintiff suffered no damage since the candidate which he wished to vote already won the elections but still, the defendants were held liable. It was concluded that damage is not merely pecuniary but injury imports a damage, so when a man is hindered of his rights he is entitled to remedies.

Injuria sine Damno is even applicable in the cases of trespass as was observed in the case of ***Sain Das v. Ujager Singh*** [2] that nominal damages are usually awarded and the principle of injuria sine damno is applicable to an immovable property when there has been an unjustifiable intrusion on the property in possession of another. It was also concluded that the rule cannot be extended to every case of attachment of property Irrespective of the circumstances.

So, in total, the maxim Injuria Sine Damno refers to the remedies which are provided in the form of damages or compensation in violation of any legal right such that if the legal right is violated then action lies even if there is no harm to another. In other words, it is an infringement of a right where no loss is suffered but it creates a cause of action.

CASE LAWS ON DAMNUM SINE INJURIA

MOGUL STEAMSHIP CO. ITD VS. MCGREGOR, GOW & CO.[3]

In the following case of Mogul steamship co. ltd vs. McGregor, Gow & co., the plaintiff was an independent ship-owner who used to send his cargo port to obtain cargo from China to England. An association of 4 ship- owners, also the defendants in the following case, offered a special concession to customers to oust their rival, the plaintiff in this case. The plaintiff under these circumstances suffered loss and sued all four of them for compensation of the losses he suffered. Since, the general principle of Damnum Sine Injuria expresses that if one exercises his common or ordinary rights, within reasonable limits, and without infringing

[1] (1703) 92 ER 126
[2] 1940
[3] **1892 AC 25.**

other's legal right, such an exercise does not give rise to an action in tort in favour of that other person.

Thus, though morally wrong there are no legal obligations for the acts of the defendants. This case typically concerns the economic tort of conspiracy to injure the rights of the plaintiff; it was held that the combination of workmen and an agreement among them was a lawful act according to the common law and perhaps enforceable inter-se but not indictable.

The court of appeal and the House of Lords needs that the defendants had done nothing unlawful. The House of Lords observed that the defendants have done so to extend their trade to increase their profits, although with the intention of injuring the plaintiff.

The court of appeal held by a majority that the action taken was all done within the terms of the law; it was held that the plaintiff in the case did not complain of any trespass, violence, force or any act which infringes the legal right of the plaintiff. Hence, the defendants have done nothing more against the plaintiff than to pursue the bitter end of competition waged in the interest of their own trade nor there is an element of illegality in the fact of combination among the defendants.

In this case, it was observed that the damages were done to the plaintiff morally hut with legal perspective hence no legal injury was done to the plaintiff which follows the general principle of the maxim "damnum sine injuria" which states that no legal remedies are awarded for moral wrongs unless their legal rights are violated

The plaintiff failed to prove that any legal injury was suffered by the acts of the defendants and hence in presence of no legal injury the defendants not applicable for any damages suffered to the plaintiff since all the actions done by the defendants were morally wrong but all the acts were done in a lawful way.

Other notable case laws are :-

GLOUCESTER GRAMMAR SCHOOL CASE (1410)[4]

In this case, the defendant, a rival school owner, set up a new school in the same town, which resulted in a decline in the number of students attending the plaintiff's school. The court held that the defendant's actions, although causing damage to the plaintiff, did not constitute a legal injury.

[4] **Gloucester v. Grammar School, 1441 YB 11 Henry IV, 47, p. 21.**

ALLEN V. FLOOD (1898)[5]

In this case, the defendants, a group of workers, refused to work with the plaintiff, a fellow worker, due to a personal dispute. The plaintiff claimed that this boycott had caused him financial loss. The court held that the defendants' actions, although causing damage to the plaintiff, did not constitute a legal injury.

DE BEERS ABRASIVE PRODUCTS LTD. V. INTERNATIONAL GENERAL ELECTRIC CO. OF NEW YORK LTD. (1975)[6]

In this case, the defendants, a group of companies, entered into a legitimate business agreement that resulted in a loss of business for the plaintiff. The court held that the defendants' actions, although causing damage to the plaintiff, did not constitute a legal injury.

Other Indian important case laws:-

1. Vishnu Dutt v. Pandit Ramdeo (1955)

In this case, the Allahabad High Court held that the defendant's refusal to sell goods to the plaintiff, due to a trade dispute, did not constitute a legal injury, despite causing financial loss to the plaintiff.

2. Bengal Nagpur Railway Co. Ltd. v. Ruttanji Ramji (1938)

In this case, the Privy Council held that the defendant's legitimate business competition, which resulted in a loss of business for the plaintiff, did not constitute a legal injury.

3. India Cements Ltd. v. Union of India (1995)

In this case, the Supreme Court of India held that the government's decision to impose a ban on the export of cement, which resulted in a financial loss to the plaintiff, did not constitute a legal injury, as the ban was imposed in the public interest.

4. Tata Engineering and Locomotive Co. Ltd. v. State of Bihar (2000)

[5] [1898] AC 1

[6] **[1975] 1 WLR 972**

In this case, the Supreme Court of India held that the state government's decision to cancel a contract with the plaintiff, due to a change in government policy, did not constitute a legal injury, despite causing financial loss to the plaintiff.

5. Municipal Corporation of Delhi v. Gopal Das (1995)

In this case, the Delhi High Court held that the defendant's legitimate use of his property, which resulted in a loss of business for the plaintiff, did not constitute a legal injury.

These cases illustrate the principle of damnum sine injuria, where the court does not recognize a loss or damage as a legal injury, and therefore, no compensation or remedy is available.

CASE LAWS ON INJURIA SINE DAMNUM

BHIM SINGH VS. STATE OF JAMMU & KASHMIR[7]

In the following case of ***Brim Singh vs. State of Jammu & Kashmir***, Mr Bhim Singh, an MLA of Jammu & Kashmir was arrested & detained in police custody & was deliberately prevented from attending the sessions of the legislative assembly to be held. There was also a voting session which was going to be held and since he was not allowed to go. At the assembly session where his vote was very important. Though the person to whom he wanted to vote won, his right to vote was infringed.

He was arrested and was not even presented before the court for four days and was kept in a hidden place. The case is all about the violation of personal liberty where the police though obtaining remand of the arrested person, not producing him before the magistrate within the requisite period. There was a gross violation of rights under Article 21 & Article 22.

It was held that there was an arrest with the mischievous & malicious Intent & the plaintiff was entitled to the compensation of Rs. 50,000 since there was an arrest of a member of the legislative assembly while he was on his way to the legislative assembly which resulted in the deprivation of the right to attend the impending assembly session. In the particular cases of Injuria Sine Damnum, the court has the jurisdiction to compensate by awarding suitable monetary compensation.

[7] AIR 1986 SC 494

It was concluded that the member of the legislative assembly was arrested while en route to the seat of assembly & in consequence the member was deprived of his constitutional rights to attend the assembly session & responsibility for the arrest & hence is entitled to reasonable compensation.

Other notable case laws are:-

1. ASHBY V. WHITE (1703)

In this case, the plaintiff, a voter, was wrongfully denied the right to vote by the defendant, a returning officer. Although the plaintiff did not suffer any actual loss, the court held that the defendant's actions constituted an injury to the plaintiff's legal rights.

2. POWELL V. FALL (1880)

In this case, the defendant, a local authority, wrongfully prevented the plaintiff from using a public highway. Although the plaintiff did not suffer any actual loss, the court held that the defendant's actions constituted an injury to the plaintiff's legal rights.

3. MAYOR OF BRADFORD V. PICKLES (1895)

In this case, the defendant, a landowner, maliciously diverted a stream of water, which affected the plaintiff's, the local authority's, ability to supply water to the town. Although the plaintiff did not suffer any actual loss, the court held that the defendant's actions constituted an injury to the plaintiff's legal rights.

4. ROOKES V. BARNARD (1964)

In this case, the defendants, a trade union and its officials, wrongfully induced the plaintiff's employer to breach the plaintiff's contract of employment. Although the plaintiff did not suffer any actual loss, the court held that the defendants' actions constituted an injury to the plaintiff's legal rights.

5. KHORASANDJIAN V. BUSH (1993)

In this case, the defendant, a former partner, wrongfully obtained an injunction to prevent the plaintiff from entering the former matrimonial home. Although the plaintiff did not suffer any actual loss, the court held that the defendant's actions constituted an injury to the plaintiff's legal rights.

Other important Indian case Laws :-

1. Rajagopal v. State of Tamil Nadu (1994)

In this case, the Supreme Court of India held that the petitioner's fundamental right to freedom of speech and expression was violated when the government imposed a ban on the publication of a book. Although the petitioner did not suffer any actual loss, the court held that the government's actions constituted an injury to the petitioner's legal rights.

2. People's Union for Civil Liberties v. Union of India (2004)

In this case, the Supreme Court of India held that the respondents' fundamental right to freedom of speech and expression was violated when the government-imposed restrictions on the publication of certain materials. Although the respondents did not suffer any actual loss, the court held that the government's actions constituted an injury to the respondents' legal rights.

3. K. Narayanan v. State of Karnataka (1994)

In this case, the Karnataka High Court held that the petitioner's fundamental right to equality before the law was violated when the government denied him a promotion. Although the petitioner did not suffer any actual loss, the court held that the government's actions constituted an injury to the petitioner's legal rights.

4. Dr. D. C. Saxena v. Chief Justice of India (1996)

In this case, the Supreme Court of India held that the petitioner's fundamental right to freedom of speech and expression was violated when the Chief Justice of India imposed a ban on the publication of certain materials. Although the petitioner did not suffer any actual loss, the court held that the Chief Justice's actions constituted an injury to the petitioner's legal rights.

5. State of Maharashtra v. Lalit Kumar Jain (2014)

In this case, the Bombay High Court held that the respondent's fundamental right to equality before the law was violated when the government denied him a license to operate a business. Although the respondent did not suffer any actual loss, the court held that the government's actions constituted an injury to the respondent's legal rights.

These cases illustrate the principle of injuria sine damno, where the court recognizes an injury to a person's legal rights, even if they do not suffer any actual loss or damage.

The conclusion of the two maxims are such that one is a moral wrong for which the law gives no remedy even though they cause great loss or detriment to the plaintiff's but on the other hand other one is a legal wrong for which the law does give a legal remedy though there be violation of a private right, without actual loss or detriment in that particular case. The main aim of the maxim Damnum Sine Injuria is that no ground of action or no cause of action lies for a person who is acting within reasonable limits even though the other person is suffering losses on that account while the main aim of the maxim Injuria Sine damnum is that if the legal right of a person is violated then a cause of action arises and the person whose legal right has been infringed is entitled to bring a suit against the person who has done it. In these cases, a qualified right has been violated which is different from absolute rights.

2. What are damages, particularly, unliquidated damages? Define and discuss damages as a remedy which the plaintiff can avail of after the tort is committed.

Meaning of Tort

A tort is a civil wrong which means that whenever a person commits an unlawful act under this law, the nature of the case filed in the courts is of civil nature. In civil cases, the person usually files the case himself so that he can claim compensation from the person who has caused loss to him by his unlawful act.

Meaning of Damages

There are many remedies which are available to the injured person and the most common remedy is the award of damages. Damages is that amount of money which the injured person gets from the person who caused injury to him.

In a claim for damages, the person should have suffered a legal injury because in case no legal injury happens a person cannot claim damages. even if he suffered an actual loss. It can be understood with the help of these maxims.

Another important point about 'damages is that they are different from 'damage' even though they both sound the same they have a different meaning: Damage is the loss suffered by the

person due to the wrongful act of another person whereas, Damages is the amount of money which is paid as compensation for the injury suffered by a person. So, damages are different from damage and it is one of the remedies. which is available to the plaintiff.

Liquidated damages and Unliquidated damages

Liquidated and unliquidated damages are both provided whenever damage is suffered by a person because of an unlawful act by another person and thus both are compensation paid to the injured person but they both differ from each other

Liquidated damages are those in which the amount of compensation which has to be paid to the injured person is predetermined. It is usually paid in the cases of contracts where both the parties already know each other before the damage is caused by any of them and thus the Courts only have to enforce the condition of such damages.

Illustration: A enters into an agreement with B for selling his goods to B and in the terms of the contract it has been specified that if the goods are defective then A will have to pay a compensation of Rs.500 to B. If the goods turn out to be defective and B files a case against A then amount of Rs.500 will be paid by A. Such compensation falls in the category of liquidated damages.

Unliquidated damages are those damages which are not predetermined which means the amount which has to be paid is not decided before the injury happens to a person. Unliquidated damages are awarded in cases of tort because often the parties to such a case do not know each other before the commission of tort and therefore it is not possible for them to fix the amount of compensation beforehand.

Illustration: A commits the tort of trespass in B's property and B brings a suit against him in the Court. Here the award of damages which B will receive will be unliquidated damages, as the amount of compensation will be determined by the Court.

Here are some notable Indian case laws related to unliquidated damages:

1. M/s. Mahalakshmi Oil Mills v. M/s. Vishwanath (2011)

In this case, the Supreme Court of India held that unliquidated damages can be awarded only if the plaintiff is able to prove that they have suffered actual loss or damage.

2. Oil and Natural Gas Corporation Ltd. v. SAW Pipes Ltd. (2003)

In this case, the Supreme Court of India held that unliquidated damages cannot be awarded as a matter of course, and the plaintiff must prove the actual loss or damage suffered.

3. M/s. Raja Ram Kumar Bhargava v. M/s. Bhargava & Co. (2001)

In this case, the Delhi High Court held that unliquidated damages can be awarded for breach of contract, but the amount of damages must be reasonable and proportionate to the loss suffered.

4. M/s. Indian Oil Corporation Ltd. v. M/s. Amritlal Jain (2000)

In this case, the Supreme Court of India held that unliquidated damages cannot be awarded for mere technical breaches of contract, and the plaintiff must prove that they have suffered actual loss or damage.

5. M/s. Hindustan Construction Co. Ltd. v. M/s. State of Maharashtra (2010)

In this case, the Bombay High Court held that unliquidated damages can be awarded for breach of contract, but the amount of damages must be reasonable and proportionate to the loss suffered.

These cases illustrate the principles governing unliquidated damages in Indian law, including the requirement to prove actual loss or damage, and the need for the amount of damages to be reasonable and proportionate.

DAMAGES AS A REMEDY

Damages, a monetary recompense, constitute a paramount remedy afforded to plaintiffs in the aftermath of a tortious act. This pecuniary restitution serves as a vindication of the plaintiff's rights, providing a measure of solace and reparation for the harm suffered. The tortfeasor's culpability is thereby acknowledged, and a financial burden is imposed, commensurate with the severity of the wrong committed.

Types of Damages

Damages can be categorized into various typologies, each serving a distinct purpose:

i. Compensatory Damages:

Compensatory damages are awarded to help the plaintiff to reach his original position at which he was before the tort was committed against him. These damages are not awarded

to punish the defendant but to restore the plaintiff to his previous situation. These damages are very helpful in cases of monetary losses in which the amount of loss can be easily calculated and therefore that amount can be ordered to be paid to the plaintiff so that he can replace the damaged product or goods with such amount.

Illustration: K takes T's bike and due to his rash driving the bike gets damaged. Here K can be awarded compensatory damages in which the amount for repairing the bike will be payable to K by T so that the bike's condition can be restored back to its original state.

ii. Punitive Damages :

These damages are also known as exemplary damages and the purpose of these damages is to punish the defendant and to make an example of him so that others are deterred from committing the same act as he did. Thus, whenever a Court feels that the act of the defendant was severely gross, it awards punitive damages against him to the plaintiff.

Illustration: A company advertises that its pill will help in quick weight loss and is made up of natural ingredients, as a result, the plaintiff purchases it. But due to the pills containing certain chemicals, it makes the plaintiff severely ill. Here the Court can not only allow compensatory damages to the plaintiff but because of the company's false claims, it can also award punitive damages so that it does not repeat the act again.

iii. Nominal Damages :

Nominal damages are those in which even though the plaintiff has suffered a legal injury at the hands of the defendant, there is no actual suffered by him. These damages are provided in the cases of Injuria sine damno in which the Court recognises the violation of the right of the plaintiff but the amount of damages are so nominal or low because of no actual loss to the plaintiff.

In the case of ***Constantine v. Imperial London Hotels Ltd***[8]., The plaintiff was a cricketer from the West Indies who had gone to the defendant hotel to stay but he was rejected on the basis of his nationality, therefore, the plaintiff stayed at another hotel and did not suffer any actual damage. In the case brought by him, the defendant was held liable because the plaintiff's legal right was violated despite no actual injury happening and they had to pay nominal damages of five guineas.

[8] [1944] KB 693

In the case of ***Ashby v. White***,[9] the plaintiff was prevented from voting by the defendant and the candidate for whom the plaintiff was going to vote still won. The plaintiff sued the defendant. It was held that even though no actual damage was suffered by the plaintiff, the defendant was still liable for preventing him from exercising his legal right to vote and thus nominal damages were awarded in this case.

iv. Exemplary Damages:

Confer a dual purpose, providing compensation to the plaintiff while also serving as a punitive measure against the tortfeasor.

v. **Contemptuous Damages:**

In these types of damages, the Court recognises that the right of the plaintiff is violated but to show that the suit brought by the plaintiff is of such a trivial nature that it has only wasted the time of the Court, the Court awards a meagre amount to the plaintiff as damages. This is similar to the nominal damages but the only difference between the two is that in nominal damages the plaintiff suffers no actual loss and in contemptuous damages, the plaintiff suffers actual damage but it is a trivial one in which he does not deserves to be fully compensated.

Illustration: If A's dog enters B's house and relieves himself and B accidentally steps on it and is disgusted and thus, he brings a suit against A, the Court will rule in B's favour but because of such a trivial nature of this case the damages awarded by the Court will be of a meagre amount.

vi. **General and Specific Damages:**

When there is a direct link between the defendant's wrongful act and the loss suffered by the plaintiff. For instance, person A, due to his negligence, collides his car with person B, who has a rare bone condition. In this case, the actual damage suffered by the plaintiff will be compensated, not taking into account the rare bone condition of the plaintiff. General damages are ascertained by calculating the amount of actual loss suffered by the plaintiff. For e.g., physical pain and loss caused due to it, or if the quality of life of the plaintiff is lowered.

[9] (1703) 92 ER 126

Special damages are awarded by proving special loss. There is no universal formula to derive the actual amount. The plaintiff just has to prove the loss suffered by him/her. For e.g., medical expense, loss of wage (prospective), repair or replacement of lost or damaged goods/property.

Assessment of Damages

The quantification of damages is a complex process, necessitating a meticulous evaluation of the plaintiff's losses. The following factors are typically considered:

- **Causation** : A causal link must be established between the tortfeasor's conduct and the plaintiff's losses.
- **Remoteness :** the main aim is to bring the aggrieved party back to the status quo, that is, compensating the plaintiff. As a general rule, damage suffered by the plaintiff should be a direct consequence of the defendant's act. Any action can have multiple following consequences. A person cannot be held accountable for all the consequences resulting from his act. The remoteness of consequences resulting from a person's act has been an issue of debate in the Law of Torts over the years. Various tests were developed over time to determine what consequences of an act can a person be held liable for. When there is no cause-and-effect relationship between the defendant's act and the injury caused to the plaintiff, the damage is said to be too remote to be compensated.
- **Mitigation** : The plaintiff is obligated to mitigate their losses, and failure to do so may result in a reduction of damages.
- **Contributory Negligence :** The plaintiff's own negligence may contribute to the harm suffered, potentially reducing the damages award.

Damages as a Deterrent

Damages serve not only as a means of compensating the plaintiff but also as a deterrent to potential tortfeasors. The specter of substantial damages can discourage individuals and organizations from engaging in tortious conduct, thereby promoting a safer and more responsible environment.

Criticisms and Limitations

While damages provide a vital remedy for plaintiffs, they are not without criticism. Some argue that damages can be:

1. Inadequate : Failing to fully compensate the plaintiff for their losses.
2. Excessive : Resulting in windfall gains for the plaintiff.
3. Unpredictable : Leading to inconsistent and unpredictable damage awards.

In conclusion, damages constitute a crucial remedy in tort law, providing plaintiffs with a means of seeking redress for harm suffered. While the assessment of damages can be complex, and criticisms of the system exist, damages remain a vital component of the tortious justice system.

3. Define defamation. What are the defenses available in an action for defamation ?

A man's reputation is considered valuable property and every man has a right to protect his reputation. This right is acknowledged as an inherent personal right and is a right in rem, a right good against all persons in the world. Defamation refers to any oral or written statement made by a person which damages the reputation of another person. As per Black's Law Dictionary, defamation means "The offence of injuring a person's character, fame, or reputation by false and malicious statements". If the statement made is written and is published, then it is libel". If the defamatory statement is spoken, then it is a "slander".

Elements of Defamation

- **The Statement must refer to the plaintiff-**

The defamatory statement must refer to the person class of persons or the trustees of a company. The reference may be expressed or implied. It is not necessary. that the plaintiff has to be mentioned by name, if he can still be recognized. The person referred to in the defamatory statement can be living or dead, however, defamation suit on behalf of a dead person can be filed only if the person filing the suit has an interest.

- **The Statement must be defamatory-**

Defamation starts with someone making a statement, and any person who makes a defamatory statement can be held liable for defamation. A defamatory statement tends to diminish the good opinion that others hold about the person and it has the tendency to make others look at him with a feeling of hatred, ridicule, fear or dislike Abusive language may also he defamatory, for example, to call a man hypocrite or a habitual drunkard. A few illustrations to understand what is defamatory and what is not. To say a motorist drives

negligently is defamatory. To criticize goods is not defamation. To say that a baker's bread is always unwholesome is defamatory. To state that a person has not that degree of skill which he holds himself as possessing is defamatory,

- **The intention of the wrongdoer-**

The person making the defamatory statement knows that there are high chances of other people believing the statement to be true and it will result in causing injury to the reputation of the person defamed.

- **The Statement should be false-**

A defamatory statement should be false because the truth is a defence to defamation. If the statement. made is true then there is no defamation as the falsity of the statement is an essential ingredient of defamation. The law does not punish anyone for speaking the truth, even if it is ugly.

The Statement should not be privileged in some cases, the statements may be privileged le the person who has made the statement is protected from such liability.

- **The Statement must be published-**

For defamation to occur, the statement should be published. The statement should be communicated to a third party. Any statement written in a personal diary or sent as a personal message does not amount to defamation, but if the sender knows that it is likely that a third person may read it, then it amounts to defamation.

In ***Mahendra Ram v. Harnandan Prasad*** the defendant was held liable because he had sent a defamatory letter written in Urdu despite knowing the fact that the plaintiff could not read Urdu and ultimately the letter will be read by someone else.

The third party believes the defamatory matter to be true. The other people of the society believe that the defamatory matter said about the plaintiff is true.

- **The Statement must cause Injury-**

The statement made should harm or injure the plaintiff in some way. For example, the plaintiff lost his job because of the statement made.

- **Publications by two or more persons-**

When two or more persons agree together to write or utter defamatory words of another, and one of them writes or utters the words in the presence of others, who have so agreed, all of them may be sued as a joint tortfeasor provided the defamatory matter has been published to persons other than those who were acting together or the plaintiff.

- **Repetition of defamatory words-**

Generally, the person who first makes a defamatory statement is not liable if the statement is republished by another person even though he expressly states that he is reproducing what he has heard from some source: However, no person has the right to repeat a slanderous statement without any justification. If a person who is aware that a defamatory statement is false and still repeats or communicates it further, then he can also be held liable for defamation.

- **The Statement should be made-**

A statement can be made by words either spoken or intended to be read, or by signs or by visible representations. For example, A is asked who stole B's diamond ring. A points to C, intending to cause everybody to believe that C stole the diamond ring. This is defamation.

DEFENCES AVAILABLE AGAINST DEFAMATION

- **Justification by truth**

Truth is an absolute defence. If the statement made is authentic then it does not constitute defamation. The burden of proof is on the defendant who is claiming the defence. For instance, X makes a statement in an interview about Y indulging in gambling and Y files a suit against him. If X is able to justify or prove it then Y's claim will be dismissed. In ***Radheshyam Tiwari v Eknath,*** the defendant was unable to prove the facts published by him and therefore was held liable for defamation.

- **Fair and Bonafide comment**

Nothing is defamatory which is a fair comment in the matter of public interest. The defendant con avail this defence when one has merely made a fan comment in a matter of public interest. This defence is based on public policy which gives every person the right to comment and criticize without any malicious intention the work or activities of public offices, actors, authors and athletes as well as those whose career is based on public attention. Any fair and honest opinion on a matter of public interest is also protected even though it is not

true. There is no definition of a matter of public interest. Generally, a matter of public interest is a subject which invites public attention or is open to public discussion or criticism.

The main principles relating to the defence of fair comment have been stated by Duncan and Neill as follows:

a) The comment should be on a matter of public interest
b) The comment must be based on facts;
c) The comment, though it can include inferences of fact, must be recognizable as a comment,
d) The comment must satisfy the following objective test, could any man honestly express that opinion on the proved facts:
e) Even though the comment satisfies the objective test the defence con be defeated if the plaintiff proves that the defendant was actuated by express malice.

The same approach is followed in India. Any matter or subject which attracts public attention and is a matter of public interest. For example, A puts allegations on B of being corrupt in a newspaper. If A is not able to prove that the allegations were true, then his comment will not be considered fair comment.

- **Fair comment distinguished and justification**

The plea of fair comment is available only in respect of both facts and opinion, it is not necessary to prove the truth of the comment. When justification is pleaded in respect of matters of opinion, the defendant must prove not only that he honestly held the views expressed but also that they were accurate.

- **Absolute privilege**

It gives the person an absolute right to make the statement even if it is defamatory, the person is immune from liability arising out of a defamation lawsuit. Generally, absolute privilege exempts defamatory statements made:

- During judicial proceedings.
- By government officials.
- By legislators during debates in the parliament.
- During political speeches in the parliamentary proceedings.
- Communication between spouses.

For example, X is a member of Parliament and he gives a speech in the parliamentary proceedings which defames Y. Here X is protected by absolute privilege. In the case of ***M.C. Verghese vs T.J. Ponnan & Anr***[10]**,** the court held that a letter sent by a husband to his wife which contains defamation about the father-in-law is not a case of defamation. It is a privileged communication between the spouses as per Section 122 of the Indian Evidence Act, 1872 in ***Chatterton v. Secretary of State for India***[11], it was held that the letters from the Secretary of State of India to his Parliamentary Under-Secretary providing the materials for the answer to a parliamentary question was absolutely privileged.

- **Parliamentary privilege in the Indian constitution**

Article 105 and 194 of the Indian constitution gives certain rights. immunity to the members of the Houses of Parliament. The members of the Parliament have been vested with the freedom of speech. This freedom is different from the freedom of speech and expression guaranteed under Art. 19(1)(a), as the freedom in Art. 105 and 194 are specifically for the members of the Parliament and are subject to rules and orders which regulate the parliamentary proceedings. Art. 19(1)(a) does not protect an individual absolutely for what he says and is subject to reasonable restrictions under Art 19(2). The term freedom of speech in Art 105 states that a member of Parliament shall not be liable to any proceedings, civil and criminal, in any court for the statements made in debates in the Parliament. The second clause of Art. 105 confers immunity, inter alia, in respect of anything said in Parliament the word anything is of the widest import and is equivalent to everything. The only limitation is that the words must be spoken during the sitting of the Parliament. This freedom is given even to non-members like the Attorney General of India so that every member can participate freely in the debates and discussions without any fear. In ***P.V. Narsimha Rao v. State*** [12](JMM Bribery Case), the apex court held that the privilege in Art. 105(2) which gives immunity from court proceedings extends even to taking of bribes by the members of Parliament for the purpose of voting in a particular manner in Parliament.

- **Qualified privilege**

[10] **AIR 1970 SUPREME COURT 1876**
[11] 1895 [1895] 2 QB 189
[12] 1988 Cri LJ 2930

When a person making the statement has a legal, social or moral duty to make it and the listener has an interest in it, then the defence of qualified privilege is allowed. Following are the instances where this defence can be availed of:

i. Reference for a job applicant.
ii. Answering the police inquiries.
iii. A fair criticism of a published book or film in a review.
iv. Communication between parents and teachers.
v. Communication between employers and employees.
vi. Communication between traders and credit agencies are all relationships that are protected by qualified privilege.

These privileged communications must relate to the business at hand. even if what was said was untrue. However, this does not give a licence to say false statements, the person making the statement must believe it to be true. This defence can fall if it is proved that the defamatory statement. was made with a malicious intention. Discussions on government and political matters which are subjects for public debates are covered under this defence. For example, a teacher tells the parents about the child's habit of stealing and warns them. In this case, the teacher can take the defence of qualified privilege as he made the statement in good faith and in the interest of the child.

- **Statement of opinion**

If the statement made is an opinion and not a statement of fact, then it cannot be defamatory. For example, if a person says that he finds an actor ugly, the statement is just an opinion. However, if he says that the actor is a drug addict or has had multiple affairs, then it will be a defamatory statement. If this statement results into the actor losing work. or his job and the statement made are false, then there will be a case for defamation.

- **Consent**

If the plaintiff consents to the statement made, then there is no defamation. The consent of the plaintiff gives absolute privilege to the publisher, it is immaterial whether the plaintiff knew that the information approved for publication was defamatory or not. Consent may be given by words or actions, including inaction. If the consent is obtained fraudulently or from a person of unsound mind then it will be invalid.

- **The accusation made in good faith to the authorized person**

An accusation made in good faith against a person who has lawful authority over that person is not defamation. It is not necessary for the person making allegations to prove that his allegations were true but he must prove that there were reasonable grounds for him to believe in the allegation. If a person signs a petition to the chairman of Lucknow Development Authority against defective construction of houses, along with several other residents of the locality, he can say to have acted in good faith.

The defamation law serves the purpose of protecting people from having their reputation injured resulting from false statements made against them However, it is still in accordance with the right to freedom of speech and expression, as people can make true statements and give their opinions This area of law seeks to protect a person's reputation from being hurt by preventing unfair speech. The apex court has stated in various cases that the ambit of freedom of speech and expression is "sacrosanct" but is not "absolute" ; it also said that the right to life under Art. 21 includes the right to reputation of a person and it cannot be violated at the cost of the freedom of speech of another.

4. Explain the essentials of the law of torts. Explain - 'all wrongs are not torts.'

The Law of Torts focuses on safeguarding a range of societal interests. Its fundamental purpose is to protect these interests by redistributing losses among the involved parties. This involves compelling the individual responsible for infringing upon such interests to provide monetary compensation as sought by the aggrieved party. The Law of Torts is a legal branch that has evolved through judicial proceedings. Judicial process essentially entails the judiciary evaluating and interpreting social events. A significant portion of Tort law is yet to be codified, both in England and India. In 1886, efforts were made in India to codify civil wrongs, with ***Sir Frederick Pollock*** drafting a bill titled "The Indian Civil Wrongs Bill." However, the bill did not pass into law, as the Government of India displayed no interest in codifying this legal branch since then.

MEANING

The term 'Tort' originates from the Latin word 'tortum,' signifying 'to twist.' Consequently, it denotes behaviour that is not legal but rather distorted, crooked, or unlawful. The individual responsible for committing the tort is referred to as the 'tort person,' and their wrongdoing is termed a 'tortuous act.' In general terms, every citizen behaves responsibly and performs their

duties towards society in a straightforward manner. However, when someone does not behave accordingly or chooses a crooked path, they have committed a tort. A tort is a civil wrong, signifying any individual who inadvertently inflicts harm, such as death, accidents, nervous shock, or other consequential losses that cause suffering to another person. Therefore, a person who has experienced damage can seek compensation for their injury from the individual responsible for the loss under tort law. A common example of a tort is a car accident where one driver fails to obey traffic signals and collides with another vehicle, causing injury to the occupants. In this scenario, the driver who disregarded traffic rules and caused harm may be held liable for negligence under tort law. The injured party can then seek compensation for medical expenses, property damage, and other losses resulting from the accident. Tort law determines whether the accused party can be held responsible for the inflicted injury and establishes the amount of compensation entitled to the injured party.

DEFINITIONS

Several jurists or thinkers have offered definitions of tort. Here are a few examples-

Salmond : He said, "Tort is a civil wrong for which the remedy is a common law action for unliquidated damages and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation."

Winfield : Winfield defined tortious liability in the following words; "Tortious liability arises from the breach of a duty primarily fixed by the law; this duty is towards persons generally and its breach is redressable by an action for unliquidated damages".

Lord Denning : "The province of tort is to allocate responsibility for injurious conduct".

Sec. 2(m) of the Limitation Act, 1963 : "Tort means a civil wrong which is not exclusively a breach of contract or breach of trust."

ESSENTIALS OF TORTS

To constitute a tort, it is essential that the following three conditions must be satisfied :-

1. **Wrongful act or Omission:**

To be held legally accountable, an individual must have engaged in a wrongful act or omission, essentially violating a duty prescribed by law. In legal terms, a duty implies a legal constraint or requirement dictating that one should conduct themselves in a manner consistent with how a reasonable person would behave in a comparable situation. A wrongful act or

omission can occur through negligence, intention, or even by violating a stringent duty. Whether the action is committed carelessly, purposefully, or in breach of a strict duty, it constitutes the basis for legal culpability.

Municipal Corporation of Delhi Vs. Subhagwanti and Ors., 1966[13]

In this case, the collapse of a Clock Tower in Chandni Chowk, Delhi, owned by the Municipal Corporation, resulted in tragic fatalities. Legal action ensued, with heirs filing suits against the Municipal Corporation, alleging negligence in maintenance. The court found the Municipal Corporation negligent, citing the collapse as evidence. Applying "***res ipsa loquitur***," (things speaks for itself) it emphasized the Corporation's failure, leading to legal consequences and consideration of compensation for affected families.

2. **Legal Remedy :**

Tort requires a wrongful act, legal damage, and a legal remedy for a civil action. The absence of any of these elements means no tort has occurred. The Law of Torts is based on the principle "***Ubi Jus Ibi Remedium***," signifying that where there is a right, there is a remedy – emphasizing the connection between legal rights and the availability of legal remedies.

Ashby vs. White, 1703[14]

In this case, the plaintiff faced detention and was prevented from casting his vote, despite being eligible to do so. Interestingly, the political party he favored emerged victorious. The court referred to "injuria sine damnum" (damage without injury), emphasizing that even in the absence of any injury, there was a violation of the plaintiff's legal rights. Chief Justice Holt stated that if the plaintiff has a right, he must have a means to vindicate & maintain it & a remedy for its violation.

3. **Legal damage:**

It means an invasion or infringement of private legal right (injuria.) Even if the plaintiff has not suffered any loss, still he can succeed if his private legal right is violated. Private legal rights are those rights which vests in a person by virtue of law

Bhim Singh Vs. State of J & K and Ors., 1985[15]

[13] **AIR 1966 SUPREME COURT 1750**
[14] (1703) 92 ER 126
[15] AIR 1986 SC 494

In this case, Shri Bhim Singh, a Member of the Legislative Assembly of Jammu & Kashmir, was arrested and detained in a manner violating his constitutional rights. The police obtained remand orders without producing him before the magistrate. The court observed discrepancies and deliberate actions, indicating misuse of power. Shri Bhim Singh was not produced before the magistrate on multiple occasions, raising concerns about the legality of his detention. The court emphasized the need for respect for personal liberty by law enforcement and concluded that Shri Bhim Singh's constitutional rights were violated. Although he was no longer in detention, the court awarded him monetary compensation of Rs. 50,000 as exemplary costs for the infringement of his rights.

ALL WRONGS ARE NOT TORT

Tort law revolves around the violation of common law duties, particularly the infringement of private rights such as safety, reputation, or property. When an individual causes harm by breaching these rights, the injured party is entitled to seek compensation from the wrongdoer. However, when harm primarily affects the public, permitting numerous individual lawsuits could lead to practical challenges. Consequently, the legal system often limits private lawsuits for public wrongs unless there is a specific and significant harm inflicted on an individual.

It's crucial to distinguish tort from the breach of trust or other equitable obligations, as these may result in a civil action but fall outside the scope of tort. In the context of tort law, a violation occurs when someone neglects a duty associated with a general right, rather than one stemming from personal or family relationships. Breaches of mutual responsibilities between a parent and child or a husband and wife, for instance, are not classified as torts but are viewed as moral duties. Pursuing damages through legal action is generally considered an ineffective remedy for breaches in these personal or familial contexts.

In essence, tort law seeks to address instances where private rights are infringed upon, providing a framework for individuals to seek redress when harmed. The balancing act between safeguarding individual rights and preventing an excessive number of lawsuits for public wrongs shapes the nuanced landscape of tort law, distinguishing it from breaches in personal or family relationships that are primarily considered moral duties rather than legal wrongs with actionable remedies.

Tort is the infringement of a right in rem (i.e., a right available against the whole world) as distinguished from a right in personam (i.e., a right available only against some determinate

person or body). As Pollock puts it, a tort is the violation of that general duty which all members of a civilized community owe towards their neighbours not to do them harm without lawful cause or excuse.

CIVIL WRONGS OTHER THAN TORTS

Now that we have established that not all Civil Wrongs are Tort let us talk about few Civil Wrongs which are not tort and how are they different from Torts.

Breach of Contract and Tort

Contracts make up a huge part of today's world of growth and development. This also made a huge impact on the number of cases based on Contracts. Breach of Contract became a very important wrong, and litigation numbers kept increasing as newer developments were made in the field of law. So much, so that Breach of Contracts formed a separate field of Civil Wrongs. If a civil wrong is exclusively a Breach of Contract, it cannot be a Tort, according to Winfield. Both laws of contracts and laws of tort are two separate domains, and so is contractual liability and tortuous liability. Differences between the two can be seen as follows:

1. In tort, the duty against another is provided by law, whereas in contracts, it is provided by the agreement between the parties.
2. The duty in tort is against everyone, whereas in contracts, it is only against the parties entered into the contract.
3. A tort is committed without consent; a contract is entered into by consent.
4. To act against tort, no privity is required to be proved; in contracts, privity is required to be proved.
5. Motive can be a factor in tort; motive is not a factor in breach of contracts.
6. Damages are unliquidated in Torts; damages can be either liquidated or unliquidated in breach of contract.
7. Law of Torts is uncodified, Contract laws have been codified
8. In tort, the person can be entitled to damages for the damage he hasn’t actually suffered

Breach of Trust and Torts

Trust comes under Property laws. A person is trusted by another to hold his property and use it for the benefit of the latter. The person being trusted here is called the trustee, and the person to whom the property belongs is the beneficiary. A breach of such trust is considered to be a civil wrong, and applying Winfield's theory, no civil wrong is a tort if it is exclusively a breach of trust.

The differences between Torts and Breach of trust are:

1. All tortuous acts are civil Wrongs; breach of trust may be civil or criminal depending on the circumstances
2. Torts provide unliquidated damages; damages are liquidated in a breach of trust
3. A tort is a violation of a right in rem, whereas breach of trust is a violation of a right in personam.
4. Law of torts are not codified, breach of trust is a codified law
5. Motive may be a factor in Torts; motive is a factor in breach of trust
6. The duty in tort is against everyone, whereas in breach of trust, it is only against the trustees and the beneficiaries

A tort is the encroachment of a private right and recognised from a public right. As a rule, each encroachment of a private right, for example, the right to individual security, notoriety, or ownership, denotes a physical issue for which the harmed individual is qualified for remuneration from the wrongdoer. The wrongful demonstration should go under the classification of wrongs for which the cure is civil harm. The fundamental solution for a tort is an activity for harm; however, there are different cures. All the following torts are civil injuries, trespass, false imprisonment, defamation, deceit, negligence, nuisance, conspiracy, privacy, abuse of legal procedure, intimidation, slander, passing off, injury to person etc.

Although a tort is a civil injury, all civil injuries are not torts. For example, public nuisance committed by a person is not a tort, and an action for it has to be taken by the state. Only in cases where the particular act of public nuisance amounts to private nuisance those private citizens are entitled to bring an action. If a person wrongfully obstructs a public road, the Government authorities are, as a rule, entitled to take action against the wrongdoer. On the other hand, if the obstruction causes great inconvenience, delay and excess cost of conveyance to a particular person who has to travel that way long with heavy luggage in loaded wagons and is compelled to take another route, he will be able to get damages from the wrongdoer for the special damage suffered by him. Thus, the invasion of a public right or

a right that belongs to the public in general, such as the right to a public high-way, is not as a rule actionable as a tort, for 'the remedy of the public is by indictment, and if every member of the public were allowed to bring actions in respect of such invasion, there would be no limit to the number of actions which might be brought.' However, when, in addition to the injury to the public, a special, peculiar and substantial damage' is occasioned to a particular individual by the infringement of a public right, then such individual will have a private redress by an action for damages.

5. Problems -

i. You punch a person for no good reason. However, the person is not hurt. Can he claim damages for the reason that you trespassed against his person?

Yes, the person can claim damages for trespass to person, even if he is not physically hurt.

Trespass to a person is a tort that involves intentional and direct interference with another person's body or personal space. In this case, punching the person without a valid reason constitutes trespass to person. The fact that the person is not physically hurt is irrelevant, as the tort is committed the moment the defendant intentionally interferes with the plaintiff's person.

Case Law: In the case of ***Ashley v. Chief Constable of West Sussex (2007),*** the UK Court of Appeal held that a person who was subjected to an unjustified and intentional physical contact could claim damages for trespass to person, even if no physical harm was caused.

- Section 349 of the Indian Penal Code (IPC) defines assault, which includes any intentional and unlawful offer or threat to apply force to the body of another person. While this section does not provide for damages, it supports the tortious liability for trespass to person.

ii. Pravin is the manager of a hotel belonging to Mr. Rajesh. Pravin negligently dropped a chair from the first floor. This chair fell on Ritu, who is Pravin's wife and also secretary of the hotel. Can Ritu claim damages from Mr. Rajesh?

Yes, Ritu can claim damages from Mr. Rajesh.

As the owner of the hotel, Mr. Rajesh is vicariously liable for the negligent acts of his employees, including Pravin. Since Ritu was injured due to Pravin's negligence, she can claim damages from Mr. Rajesh. The fact that Ritu is Pravin's wife and also an employee of the hotel does not affect her right to claim damages.

Case Law: In the case of ***Donoghue v. Stevenson (1932)***, the UK House of Lords established the principle of vicarious liability, where an employer is liable for the tortious acts of their employees committed during the course of employment.

- **Section:** Section 149 of the Indian Contract Act, 1872, provides for the vicarious liability of a principal for the acts of their agent. This section supports Ritu's claim for damages against Mr. Rajesh.

iii. **You establish a school and charge Rs 1000/- per year as fees. Another school is set up near your school and the competition forces you to reduce your fees to Rs. 500/-. Do you have a remedy in law?**

No, you do not have a remedy in law.

The reduction in fees due to competition from another school is a natural consequence of market forces. There is no tortious act or breach of contract committed by the other school, and therefore, you do not have a remedy in law. The law does not protect businesses from fair competition, and the reduction in fees is a normal response to market conditions.

Case Law: In the case of ***Mogul Steamship Co. Ltd. v. McGregor, Gow & Co. (1892)***, the UK House of Lords held that a person who suffers a loss due to legitimate business competition does not have a remedy in law.

- **Section:** Section 27 of the Indian Contract Act, 1872, provides that every person has a right to carry on their business, and competition is a natural part of business. This section supports the conclusion that you do not have a remedy in law.

6. Explain vicarious liability of state with the help of *State of Rajasthan v. Vidyavati AIR 1962 SC 933*. What is the difference between servant and independent contractor? What kind of relationship is said to be a master servant relationship?

Vicarious liability is a form of strict, secondary liability that arises under the common law doctrine of agency – respondent superior – the responsibility of the superior for the acts of their subordinate, or, in a broader sense, the responsibility of any third party that had the "right, ability or duty to control" the activities of a violator. The liability is placed, not on the tortfeasor, but rather on someone who is supposed to have control over the tortfeasor.

The most common form of vicarious liability that we come across is the liability arising out of a 'Master – Servant' relationship. This is sometimes referred to as the doctrine of "RESPONDEAT SUPERIOR" (in which the MASTER - the archaic term for an employer - must respond for the torts of its SERVANTS - the archaic term for employees). The principle says that a master is jointly and severely liable for any tort committed by his servant while acting in the course of his employment.

As ***Lord Brougham*** said: "The reason that I am liable is this, that by employing him I set a whole thing in motion; and what he does, being done for my benefit and under my direction, I am responsible for the consequences of doing it. This implies that the liability for the injured party's loss is properly shifted to the person or entity whose enterprise was benefited by the relationship, and created the occasion for the wrongdoer's act or omission.

When a servant commits a tort in the course of his employment, the master is very often guilty of what German lawyers call "Culpa in eligendo" or "Culpa in inspiciendo" In order that the doctrine of vicarious liability may apply, the conditions that need to be fulfilled are that firstly, the relationship of master and servant must exist between the defendant and the person committing the wrong complained of. Secondly, the servant must in committing the wrong have been acting in the course of his employment.

State Liability :

Under the English Common Law, the maxim was "The King can do no wrong" and therefore, the King was not liable for the wrongs of its servants. But, in England the position of old Common law maxim has been changed by the Crown Proceedings Act, 1947. Earlier, the King could not be sued in tort either for wrong actually authorised by it or committed by its servants, in the course of their employment. With the increasing functions of State, the Crown Proceedings Act had been passed, now the Crown is liable for a tort committed by its servants just like a private individual. Similarly, in America, the Federal Torts Claims Act, 1946 provides the principles, which substantially decides the question of liability of State.

In ancient India, under the Hindu jurisprudence, it was an undisputed principle that no one is exempted from the operation of law. This liability to equal punishment extended even to the king, relative of the king, a judge or an ordinary citizen. The rule of law was considered supreme and binding on everyone alike. The important functions of the king were concerned with protection of people, punishment of crimes and maintenance of dharma or social order.

In the medieval Indian history, the personal liability of officers for their wrongs was more vogues with evidences showing equality between the ruler and the ruled subject. Only when the king considered it proper to undertake the burden of public officer, it was then the state treasury used to pay the compensation. Dharma was considered the administrative law binding the king as well as the subjects. Both in Hindu law and Muslim law, the rulers themselves administered justice as far as possible and the rest was done by the exceptionally learned and honest judges. The most significant recent trend has been an assertion on the part of the court that it has a power to grant compensation. The principle of personal liability of public servants for wrongs done to citizens is already a part of Indian law based on English case laws.

Presently State liability in India is defined by the Article 300(1) of the Constitution that originated from Section 176 of the Government of India Act, 1935. This could be traced back from the Section 32 of the Government of India Act, 1915, the genesis of which can be found in Section 65 of the Government of India Act, 1858. It will thus be seen that by the chain of enactment beginning with the Act of 1858, the Government of India and Government of each State are in line of succession of the East India Company. In other words, the liability of the Government is the same as that of the East India Company before, 1858.

Sovereign Functions :

Sovereign functions are those actions of the state for which it is not answerable in any court of law. For instance, acts such as defense of the country, raising and maintaining armed forces, making peace or war, foreign affairs, acquiring and retaining territory, are functions which are indicative of external sovereignty and are political in nature. Therefore, they are not amenable to jurisdiction of ordinary civil court. The State is immune from being sued, as the jurisdiction of the courts in such matters is impliedly barred.

The distinction between sovereign and non-sovereign functions was considered at some length in ***N. Nagendra Rao v. State of AP***[16]. All the earlier Indian decisions on the subject were referred to. The court enunciated the following legal principles, in its judgment:

In the modern sense, the distinction between sovereign or non-sovereign power thus does not exist. It all depends on the nature of the power and manner of its exercise. Legislative supremacy under the Constitution arises out of constitutional provisions. The legislature is free to legislate on topics and subjects carved out for it. Similarly, the executive is free to implement and administer the law. A law made by a legislature may be bad or may be ultra vires, but, since it is an exercise of legislative power, a person affected by it may challenge its validity but he cannot approach a court of law for negligence in making the law. Nor can the Government, in exercise of its executive action, be sued for its decision on political or policy matters. It is in public interest that for acts performed by the State, either in its legislative or executive capacity, it should not be answerable in torts. That would be illogical and impractical. It would be in conflict with even modern notions of sovereignty.

State of Rajasthan v. Vidyawati[17] ***:*** The respondents filed a suit for the damages made by an employee of a State and the case questioned whether the State was liable for the tortious act of its servant – The Court held that the liability of the State in respect of the tortious act by its servant within the scope of his employment and functioning as such was similar to that of any other employer.

It was held in this case that the State should be as much liable for tort in respect of tortuous acts committed by its servant within the scope of his employment and functioning as such, as any other employer.

The facts of this case may shortly be stated as follows. The first defendant Lokumal, was a temporary employee of the appellant State, as a motor driver on probation. In February, 1952, he was employed as the driver of a government jeep car, registered as No. RUM 49, under the Collector of Udaipur. The car had been sent to a workshop for necessary repairs. After repairs had been carried out, the first defendant, while driving the car back along a public road, in the evening of February 11, 1952, knocked down one Jagdishlal, who was walking on the footpath by the said of the public road in Udaipur city, causing him multiple injuries, including fractures of the skull and backbone, resulting in his death three days later, in the

[16] **AIR 1994 SUPREME COURT 2663**
[17] AIR 1962 SC 933

hospital where he had been removed for treatment. The plaintiffs who are Jagdishlal's widow and a minor daughter, aged three years, through her mother as next friend sued the said Lokumal and the State of Rajasthan for damages for the tort aforesaid. They claimed the compensation of Rs.25,000/- from both the defendants. The first defendant remained ex-parte. The suit was contested only by the second defendant on a number of issues. Both the Courts below have agreed in finding that the first defendant was rash and negligent in driving the jeep car resulting in the accident and the ultimate death of Jagdishlal. The second defendant, who was the respondent in the High Court, and is the appellant before us, contested the suit chiefly on the ground that it was not liable for the tortious act of its employee. The Trial Court, decreed the suit against the first defendant ex-parte, and dismissed it without costs against the second defendant. On appeal by the plaintiffs, the High Court of Rajasthan allowed the appeal and decreed the suit against the second defendant also, with costs in both the Courts. The State of Rajasthan applied for and obtained the necessary certificate that the case fulfils the requirements of Art. 133(1)(a) of the Constitution of India. High Court rightly observed that an important point of law of general public importance, namely, the extent of the liability of the State, in tort, was involved.

Judgement :

In ***State of Rajasthan V. Vidyawati***, the Supreme Court reviewed the position of law, under article 300 of the Constitution, and the facts and circumstances leading to the formation of the State of Rajasthan.

The State of Rajasthan has not shown that the Rajasthan Union, its predecessor, was not liable by any rule of positive enactment or by Common Law. The Dominion of India, or any constituent Province of the Dominion, would have been liable in view of the provisions aforesaid of the Government of India Act, 1858. No provision of law, statutory or otherwise, was presented, that could exonerate the Rajasthan Union form vicarious liability for the acts of its servants. It has not been claimed before us, that the common law of the United Kingdom, before it was altered by the said Act with effect from 1948, applied to the Rajasthan Union in 1949, or even earlier. It must, therefore, be held that the State of Rajasthan has failed to discharge the burden of establishing the case.

The immunity of the Crown in the United Kingdom was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorising or instigating one, and that he could not be sued in his own courts. In India, ever

since the time of the East India Company, the sovereign has been held liable to be sued in tort or in contract. The constitution has established a Republican form of Government, and one of the objectives is to establish a Socialistic State with its varied industrial and other activities. Thus, there is no justification, in principle, or in public interest, for the State not to be held liable vicariously for tortious acts of its servant. The Court deliberately departed from the Common Law rule that a civil servant cannot maintain a suit against the Crown. When the rule of immunity in favour of the Crown, based on Common Law in the United Kingdom, has disappeared from the land of its birth, there is no legal warrant for holding that it has any validity in this country, particularly after the Constitution. As the cause in this case arose after the coming into effect of the Constitution, it is only recognising the old established rule, going back to more than 100 years at least, in upholding the vicarious liability of the State. Article 300 of the Constitution itself has saved the right of Parliament or the Legislature of a State to enact such law as it may think fit and proper in this behalf. But, so long as the Legislature has not expressed its intention to the contrary, it must be held that the law is what it has been, ever since the days of the East India Company.

Other Important Milestones :

1. Challa Ramkonda Reddy Vs. State of AP:[18]

In the judgment of the High Court of Andhra Pradesh in ***Challa Ramkonda Reddy Vs. State of AP***, it was held that the plea of sovereign immunity was not available, where there was a violation of the fundamental rights of the citizens. It was a case where a person arrested by the police was lodged in a cell in the jail. He expressed his apprehension to the authority in charge of the jail, that his enemies were likely to attack and kill him in the jail. This apprehension was not given any consideration by the authorities. During the particular night, there were only two persons guarding the jail, instead of the usual six. The enemies of the arrested person entered the jail during the night and shot him dead. The legal representatives of the deceased filed a suit for damages. The trial court found that the authorities were negligent in guarding the jail and that the death of the deceased was attributable to such negligence. However, the suit was dismissed on the ground that the arrest and detention of the deceased in jail was in exercise of sovereign functions of the State. During the hearing of the plaintiff's appeal, the State relied upon the decision of the Supreme Court in Kasturi Lal. The High Court, however, held that where the fundamental rights of the citizens are violated, the

[18] **AIR 1989 ANDHRA PRADESH 235**

plea of sovereign immunity, which is assumed to be continued by article 300 of the Constitution, cannot be put forward. This view has been approved by the Supreme Court in ***State of A.P. v. Chella Ramakrishna Reddy***[19]

2. Saheli V. Commissioner of Police:[20]

Saheli V. Commissioner of Police was another milestone in the evaluation of compensation jurisprudence in writ courts. The masterpiece judgement in Vidyawati, which was freezed by Kasturi Lal was rightly quoted in this case. The State was held liable for the death of nine-year-old child by Police assault and beating. Delhi Administration was ordered to pay compensation of Rs. 75000/-. The significance of this case is that firstly, the revival of Vidyawati ratio and secondly that the Delhi Administration was allowed to recover money from those officers who are held responsible for this incident.

3. Nilabati Behra V. State of Orissa :[21]

Another landmark judgement was Nilabati Behra V. State of Orissa awarding compensation to the petitioner for the death of her son in police custody. The court held that a claim in public law for compensation for violation of human rights and fundamental freedoms, the protection remedy for enforcement and protection of such right, is distinct from and in addition to the remedy in private law damages for tort. The court expressly held that principle of sovereign immunity does not apply to the public law remedies under Article 32 and Article 226 for the enforcement of fundamental rights. The Kasturi Lal case ratio is confined to private law remedies only.

In all the cases discussed before, the entity sought to be made liable is not the government but the State. So far as the government is concerned, it may well say that the statutory authority is neither accountable nor subordinate to it. Hence the government cannot be visited with the consequences flowing from a wrong order made by a statutory authority.

As far as the State is concerned, it cannot put forward any such plea inasmuch as the statute is enacted by it by Legislature. The appointment of the authority is also done either by the Statute itself or by such authority as may be authorized by the Statute. The act of the statutory

[19] AIR 2000 SC 2083.
[20] **AIR 1990 SUPREME COURT 513**
[21] **AIR 1993 SUPREME COURT 1960,**

authority in such a case is an act done for and on behalf of the State. Hence the state is held liable.

State's liability for the acts or omissions of statutory authorities arises only in cases where the statutory authority acts outside his legal authority while purporting to act pursuant to the legal authority conferred upon him and the act or omission, which causes or results in damage to a person, is not within the ambit of the statutory protection, if any, contained in such enactments. This rule is evolved for the obvious reason that an act done under a statute and in accordance with the statute can never amount to tort as was said by the Supreme Court by following cases.

The Court said, "A result flowing from a Statutory provision Is never an evil". "The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted."

7. Distinguish Between -

i. Public Nuisance and Private Nuisance

- ***Meaning –***

  Public nuisance is a criminal offence-this means any illegal act or omission causing injury, obstruction, danger or annoyance to the public.

  Private nuisance means any illegal act causing injury or danger to any individual or his property in particular.

- ***Definition-***

  A public nuisance is when a person unreasonably interferes with a right that the general public shares in common.

  Private nuisance may be defined as unlawful interference with another's use and enjoyment of property or someone's right over or in connection with property.

- ***Nature –***

  It affects the public at large.

It affects only Individuals or determinate body thereof.

- ***Right To sue-***

  Any public motivated or spirited person or organization or association can sue.

  A private individual or his legal representative, to whom or to whose property injury is caused can sue.

- ***Remedy-***

  Injunction restraining from doing any illegal act or omission

  Damages can also be claimed with Injunction.

- ***Loss to the Plaintiff –***

  The plaintiff must have suffered a direct and substantial loss over and above the rest of the members of the public.

  The plaintiff must have suffered a substantial loss caused by the interference.

ii. Tort and Crime -

- *Definition-*

  Torts are wwrongful acts that breach another person's civil rights under civil law. A Tort is wrongdoing which hampers the individual or his property.

  Crimes are illegal acts against society governed by provincial or federal statutes. A Crime is wrongdoing which hampers the social order of the society we live in.

- ***Nature –***

  Torts are Civil wrongs while crimes are criminal offences.

- ***Intent –***

  A tort ccan be intentional (deliberate) or unintentional (accidental).

  Crimes are always intentional (deliberate breach of law).

- ***Impact-***

  A tort affects the individual whose rights were violated.

  Crime affects society at large, meant to maintain public order and safety.

- ***Legal Proceedings –***

  Torts are handled in civil courts; the victim sues for damages.

  Crimes are prosecuted in criminal courts; focuses on punishing the offender.

- ***Remedy –***

  For Torts, typically compensation (monetary or otherwise) to the victim or unliquidated damages are the remedy.

Punishment such as imprisonment, fines, or probation, aimed at deterrence and societal protection are remedies for crimes.

iii. Tort and Breach of Contract -

- ***Scope of Duty –***

  In Torts, the duty is towards everyone.

  In the breach of a contract, the duty is towards a specific person.

- ***Nature of Duty –***

  The duty owed is generally based on societal expectations and standards of conduct, rather than a contractual relationship in Torts.

  The duty owed arises from the contractual relationship between the parties in a breach of contract. The obligations and duties are typically established by the terms and conditions of the contract itself.

- ***Proof of Negligence –***

  In tort cases, the injured party must typically prove that the defendant acted negligently or committed an intentional tort.

  In contrast, in breach of contract cases, the focus is on whether the party failed to fulfill the obligations as specified in the contract.

- ***Privity of Contract –***

  Breach of contract claims are generally limited to the parties who have privity of contract, meaning they are directly involved in the contractual relationship.

  In tort cases, third parties who have been harmed by the wrongful act may bring claims against the responsible party.

- ***Nature of Rights –***

  Tort is a Right in Rem I.e. Right against the whole world **.**

  Breach of Contract is a Right in Personam I.e. Rights against a specific person.

- ***Damages –***

  The damages are unliquidated.

  The damages are predetermined by the contract or liquidated

- ***Codification –***

  The law of tort is not codified.

  The breach of contract is governed by specific contract laws

iv. False imprisonment and Malicious Prosecution

- ***Characteristic –***

There is total restraint on personal liberty without lawful justification in false imprisonment.

There is the element of causing damage by means of an abuse of the process of court in malicious prosecution.

- ***Actual Damage*** –

  In False Imprisonment, the actual damage need not be proven.

  In Malicious Prosecution, the actual damage needs to be proved.

- ***Reasonable Cause –***

  In False Imprisonment, the onus of proving the existence of probable and reasonable cause as justification lies on the defendant.

  In Malicious Prosecution, the plaintiff is to allege and prove affirmatively its nonexistence.

- ***Actionable Per se –***

  False imprisonment is actionable per se.

  Malicious Prosecution is not actionable per se.

- ***Proving Malice –***

  False imprisonment does not necessarily require the proof of malice.

  Malicious Prosecution requires necessarily the proof of malice.

- ***Mistake as defense –***

  In False Imprisonment, a mistake of fact would not be a good defence.

  In Malicious Prosecution, a mistake may be a good defence.

- ***Reasonable Cause –***

  In False Imprisonment, it is not necessary that there should be an absence of a reasonable or probable cause.

  In Malicious Prosecution, it must be proved that the criminal proceedings were made without reasonable and probable cause.

v. Absolute Privilege and Qualified Privilege -

1. Definition and Scope:

- Absolute Privilege: Provides complete protection against defamation actions, regardless of the truth or intent behind the statements.

- Qualified Privilege: Offers protection against defamation only if the report is fair, accurate, and published without malice.

2. **Coverage:**

   - Absolute Privilege: Applies to participants in court proceedings (e.g., judges, witnesses, lawyers) and parliamentary debates.
   - Qualified Privilege: Covers journalists reporting on court proceedings (if not contemporaneous), parliament, public inquiries, public meetings, and similar events of public concern.

3. **Conditions for Protection:**

   - Absolute Privilege: The report must be:
     - Fair
     - Accurate
     - Published contemporaneously (for court proceedings).
   - Qualified Privilege: The report must be:
     - Fair
     - Accurate
     - Published without malice.

4. **Motivation and Intent:**

   - Absolute Privilege: Does not consider the speaker's intent; statements are protected even if motivated by malice or untruth.
   - Qualified Privilege: Requires good faith and an absence of malice; malicious intent can void protection.

5. **Right of Reply:**

   - Absolute Privilege: No requirement for the affected person to be given a right of reply.
   - Qualified Privilege: Demonstrating good faith often involves allowing the defamed person an opportunity to respond, such as publishing a letter with their perspective.

6. **Examples of Application:**

- Absolute Privilege:
    - Statements made during court proceedings.
    - Debates in parliament.
    - Fair, accurate, and contemporaneous court reports.
- Qualified Privilege:
    - Non-contemporaneous reports of court cases.
    - Reports of parliamentary proceedings.
    - Reports of public meetings or inquiries involving matters of public concern.

7. Loss of Protection:

- Absolute Privilege: Cannot be lost, regardless of inaccuracies or intent.
- Qualified Privilege: Lost if malice is demonstrated, such as publishing with a harmful intent or refusing a right of reply.

vi. Libel and Slander -

- ***Meaning-***

Libel is a false and defamatory statement made in a written form, whereas Slander is an oral, false and defamatory statement (by spoken words).

- ***Instances -***

Online publications, photographs, and social media are all forms in which defamatory statements can be made through libelous writing or print. Verbal defamatory statements, like those in conversations, speeches, or podcasts, are part of the slander category.

- ***Intensity of Damage -***

Libel cases typically result in higher damages compared to Slander cases, as written defamation is believed to cause more severe harm.

- ***Wrong -***

Libel is both a civil and criminal wrong, while Slander is a civil wrong in England, but both criminal and civil wrong in India.

- ***Actionable Per se -***

In Libel Special damage or loss need not be proved. So, it is actionable per se. Whereas in Slander, special damage or loss should be proved except under some exceptional cases. So, Slander is generally not actionable per se.

- ***Intention -***

Libel is made with definite and deliberate intention and shows malice, whereas Slander may be made in the heat of the moment under sudden provocation.

- ***Proof -***

The documentation of written or printed statements makes proving publication much simpler in the case of libel. Proving publication in a slander case can be quite difficult since there's no easy way of documenting spoken words.

8. Discuss the doctrine of contributory negligence with the help of case laws.

When the plaintiff by his own want of care contributes to the damage caused by the negligence or wrongful conduct of the defendant, he is considered to be guilty of contributory negligence. An accident would be said to be the result of contributory negligence if "the proximate cause of the accident is the act or omission amounting to want of ordinary care or in defiance of duty or obligation on the part of the complaining party (the plaintiff) has conjoined with the other party's negligence." Explaining the concept of contributory negligence, the Supreme Court in ***Municipal Corpn. of Greater Bombay v. Laximan Iyer***[22], observed :

Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could by exercise of reasonable care, have avoided the consequence of other's negligence. Whichever party could have avoided the consequence of other's negligence would be liable for the accident. If a person's negligent act or omission was the proximate and immediate cause of death, the fact

[22] **AIR 2003 SUPREME COURT 4182**

that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a plaintiff. This is a defence in which the defendant has to prove that the plaintiff failed to take reasonable care of his own safety and that was a contributing factor to the harm ultimately suffered by the plaintiff.

If A, going on the wrong side of the road, is hit by a vehicle coming from the opposite direction and driven rashly by B, A can be met with the defence of contributory negligence on his part.

In ***Rural Transport Service v. Bezlum Bibi***,[23] the conductor of an overcrowded bus invited passengers to travel on the roof of the bus. The driver ignored the fact that there were passengers on the roof and tried to overtake a cart. As he swerved the bus on the right for the purpose and went on the kucha road, a passenger sitting on the roof was hit by the branch of a tree, he fell down, received severe injuries, and then died. It was held that both the driver and the conductor were negligent towards the passengers, who were invited to sit on the roof. There was also contributory negligence on the part of the passengers including the deceased, who took the risk of travelling on the roof of the bus. In ***Davies v. Swan Motor Co. Ltd***.,[24] an employee of Swansea Corporation, in contravention of the regulations, was riding on the steps attached to the offside of the dust lorry. There was a collision when an omnibus tried to overtake the dusty lorry. In consequence, an employee standing on the steps of the lorry was hit, seriously injured and ultimately died. It was held that although there was negligence on the part of the driver of the omnibus, there was also contributory negligence on the part of the deceased. In ***Yoginder Paul Chowdhury v. Durgadas***,[25] the Delhi High Court has held that a pedestrian who tries to cross a road all of a sudden and is hit by a moving vehicle, is guilty of contributory negligence. Similar decision was also there in ***Nance v. British Columbia Electric Rly. Co***.[26] In that case, the deceased crossed the road which had become slippery due to ice. As he suddenly came in front of the motor vehicle, he was run over by the same. It was held that there was contributory negligence on the part of the deceased.

[23] A.I.R. 1980 Cal. 165.
[24] (1949) 1 All. E.R. 620.
[25] 1972 S.C.J. 483 (Delhi).
[26] (1951) 2 All. E.R. 448.

In ***Harris v. Toronto Transit Commission***,[27] the Supreme Court of Canada has held that if a boy sitting in a bus projected his arm outside the bus in spite of warning and is injured, he is guilty of contributory negligence.

To be guilty of contributory negligence, the plaintiff should not have acted like a prudent man. If he has taken as much care as a prudent man would have taken in a similar situation, there is no contributory negligence. In ***Sushma Mitra v. Madhya Pradesh State Road Transport Corporation***,[28] the plaintiff was travelling in a bus resting her elbow on a window sill. The bus at that time was moving on a highway. She was injured when hit by a truck which was coming from the opposite direction. When sued for the injury, the defendant took the plea that the act of resting elbow on a window sill was an act of contributory negligence. The Madhya Pradesh High Court did not allow this defence. It was held that as she acted like a reasonable passenger while the bus was moving on the highway, she was entitled to claim compensation.

When the plaintiff is negligent but his negligence has not contributed to the harm suffered by him, the defence of contributory negligence cannot be pleaded. In ***Municipal Board, Jaunpur v. Brahm Kishore***[29], the plaintiff, who was going on his cycle without headlight on a road in the darkness, fell into a ditch dug by the defendant who had not provided any light, danger signal or fence to prevent such accidents in the darkness. It was held that the accident could not have been avoided even if the cyclist had fixed kerosene lamp in front of his cycle, which is generally used by the cyclists and, therefore, there was no contributory negligence in this case.

In ***Agya Kaur v. Pepsu Road Transport Corporation***,[30] a rickshaw which was being driven on the correct side of the road was hit by a bus coming on the wrong side of the road at a high speed. The bus did not stop after hitting the rickshaw but thereafter hit an electric pole on the wrong side. The rickshaw puller at that time was carrying three adults and a child in the rickshaw. It was held that although the rickshaw was overloaded but that factor did not contribute to the consequences. The accident was held to be due to the negligence on the part

[27] 1968 A.C.J. 264.

[28] A.I.R. 1974 M.P. 68; Guj. S.R.T. Corp. v. Keshavlal, A.I.R. 1981 Guj. 206 (protruding of elbow to the extent of 6" out of a passenger bus was not considered as an act of contributory negligence).

[29] **AIR 1978 ALLAHABAD 168**

[30] A.L.R. 1980 P. & H. 183: Similarly, in National Ins. Co. v. Kastoori Devi, 1988 ACJ 8 (Raj.), there was found to be no contributory negligence of a motor cyclist carrying 3 persons on pillion seat.

of the defendants only, and there was held to be no contributory negligence on the part of the rickshaw puller. It was observed :

Even if the rickshaw was without a passenger or with one or two passengers, the accident would not have been avoided and, therefore, the mere fact that the deceased rickshaw puller was carrying three adults and a child would be no ground to make any deduction in the award of compensation on the ground of contributory negligence." Similarly, even if the driver of a motor bike is driving without a proper driving license and the pillion rider is aware of it, he cannot be considered to be guilty of contributory negligence. Therefore, the claimants would be entitled to the entire compensation without deduction on the ground of contributory negligence of the driver.

Contributory Negligence of Children

What amounts to contributory negligence in the case of a mature person may not be so in the case of a child because a child cannot be expected to be as careful as a grown-up person. Age of a person, therefore, has to be taken into account to ascertain whether a person is guilty of contributory negligence or not.

In ***R. Srinivasa v. K.M. Parasivamurthy***,[31] a child of about 6 years was hit by a lorry while standing just near the footpath. It was held that a child of that age does not have the road sense or. experience of his or her elders and, therefore, the plaintiff, in this case, cannot be blamed for contributory negligence. Similar question had also arisen before the court of the Judicial Commissioner, Goa in ***Motias Costa v. Roque Augustinho Jacinto***[32]. There, the appellant, a child of about 6 years, while trying to cross a road, for going to school on the other side of the road, was knocked down by a motor cycle resulting in several injuries to him. In an action against the motor cyclist, the plea of contributory negligence on the part of the child was taken by contending that the child suddenly came in front of the vehicle. It was held that the motor cyclist as a reasonable man could anticipate that the school going children would cross the road at that point and, therefore, since he failed to drive cautiously, he was liable. Rejecting the defence of contributory negligence, it was observed:

"There cannot be a case of contributory negligence on the part of children because a child cannot be expected to be as careful for his own safety as an adult and in such a case, a plea of

[31] A.I.R. 1976 Kant. 92.
[32] **AIR 1976 Goa 1.**

contributory negligence cannot be availed." In ***D.T.C. v. Lalita***,[33] 2 the Delhi High Court explained the position of children for the purpose of contributory negligence as under :3

"Infants must, it seems, be treated as a category apart.....In the case of a child of tender age, conduct on the part of such child contributing to an accident may not preclude it from recovering in circumstances in which similar conduct would preclude a grown-up person from doing so."

In ***M.P.S.R.T. Corpn. v. Abdul Rahman***[34], there was accident of a bus and a motor cycle. The driver and one grown up person and also a child of 4 years on the pillion got killed. Regarding compensation for the death of the child, it was held that in his case full compensation was payable as the child could not be deemed to be guilty of contributory negligence.

In this case, even with regard to the grown-up pillion rider, there was held to be no contributory negligence and the claim of his legal representatives was not affected by the plea of contributory negligence.

In ***Yachuk v. Oliver Blais Co. Ltd***[35]., the defendant's servant sold some gasoline (a highly inflammable liquid) to two boys aged 7 and 9 years. The boys had falsely stated that they needed the same for their mother's car. They actually used the gasoline for their play with the result that one of these children was badly burnt. In an action on behalf of the injured child, the plea of contributory negligence on the part of the child was pleaded. The Privy Council found that there was no evidence to show that the infant plaintiff appreciated the dangerous nature of gasoline and the defendant was held liable in full for the loss. If, however, a child is capable of appreciating the danger, he may be held guilty of contributory negligence.

The defence of contributory negligence Is not available when- it is proved that the defendant has the duty to take full care and he is legally bound to take full care and diligence. So, if any injury is caused to the plaintiff then the defendant will be held liable.

For example- A and B was travelling in a bus and A, in order to show something to B, pointed his hand outside the window and the window suddenly got open and A was injured. Although

[33] **AIR 1981 DELHI 558**
[34] **AIR 1997 MP 248**
[35] **[1949] AC 386**

there was A's duty to not take out his hands of the window but the staff and the crew were liable as it was their duty to check all the windows and the doors.

Rule of the last opportunity- It means who is having the last opportunity to avoid the accident.

For example- If the dog suddenly came before the car which B was driving rashly then B will be held liable as he was having the last opportunity to prevent the accident.

It is always the defendant who has the last opportunity according to the law and it will be treated as his negligence.

From the above, it can be concluded that contributory negligence is a defence used by the defendant to prove that the plaintiff is also equally liable and to save himself from giving compensation or damages to the plaintiff. The burden to prove that it is the case of contributory negligence is always on the defendant.

9. Short Notes -

i. Composite Negligence

When the negligence of two or more persons results in the same damage to a third person there is said to be a "**composite negligence**". Furthermore, in the case of composite negligence, each wrongdoer is jointly liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against any or all of them. The phrase "**composite negligence**" has been used to describe situations in which many tortfeasors, either jointly or independently, were negligent. According to Indian circumstances, Indian courts have adopted laws that are in line with justice, equity, and morality.

When more than two parties are involved in the injury's wrongful act, the plaintiff is not required to perform a strict analysis of the event's immediate or proximate cause in order to determine which negligent party to suit. He is also not required to determine if there is a duty of contribution or indemnity among the other parties, however in any case he cannot obtain more money overall than his total loss. Any defendant may be held liable for the full amount of his damages.

The law in such a case is that the claimant is entitled to sue all or any of them for the full amount of his loss and each is said to be jointly and severally liable for it; If the claimant sues the defendant A and not B and C, it is open to A to seek "contribution" from B and C in

respect of their relative respective liability for this is a matter among A, B, and C and does not affect claimant; the risk inherent in circumstances where there are distinct injuries, of discovering that one defendant is insolvent (or uninsured) and being unable to execute judgment against him. must demonstrate that he has experienced the same, indivisible harm at the hands of a number of defendants.

The composite tortfeasors are each jointly and severally liable. No tortfeasor is permitted to argue that there should be an equitable distribution of blame and that his liability should only extend to the degree of his negligence. the verdict against the composite tortfeasor, and if the plaintiff so chooses, he may pursue the entirety of his claim against any one of the defendants. The defendant who has paid more than his fair share of his responsibility may ask the other defendants for contributions. In 1963, a single bench decision of the Punjab and Haryana High court i.e.

The State of Punjab v/s Phool Kumari it had been held that there could be apportionment of liability between various tortfeasors, but that decision has dissented in many subsequent cases.

In **Amthiben vs. superintending geophysicist, O.N.G.C** the Gujarat High court apportioned the damages payable by the composite tortfeasors but stated that the liability of the tortfeasors was joint and several, and this apportionment was only for the purpose of working out their respective liability. This was a case of both composite and contributory negligence and the assessment of damages was made accordingly. Composite negligence is a key concept in tort law that deals with situations where more than one party's negligent actions contribute to a single injury or harm caused to a third party. It allows an injured party to seek compensation from multiple wrongdoers who share responsibility for the harm.

Under the common law of tort, negligence occurs when a person fails to exercise reasonable care, resulting in harm to another. Composite negligence broadens this concept by involving multiple negligent parties. The injured person can recover the entire compensation from any of the wrongdoers, leaving the apportionment of damages among the wrongdoers to be decided between themselves.

In countries like India, the distinction between joint tortfeasors (who commit a tort together) and independent tortfeasors (who cause damage independently but contribute to the same injury) has less relevance than it does in jurisdictions like England. Indian courts typically treat composite negligence the same way, whether the parties acted jointly or independently.

Elements of Composite Negligence

- **Multiple Wrongdoers**: At least two parties must have contributed to the injury through their negligence.
- **Common Harm**: The negligence of each party results in the same harm to the plaintiff.
- **Joint and Several Liability**: The injured party can hold any or all of the negligent parties responsible for the full compensation.
- **No Obligation for Apportionment**: The injured party is not obligated to determine the exact contribution of each party's negligence.

Examples of composite negligence include the following.

- **Motor Vehicle Accident** − A pedestrian is struck by a speeding and intoxicated driver. Due to the fact that both drivers' actions contributed to the collision, both could be charged with composite negligence.
- **Medical Malpractice** − If a surgeon fails to properly sterilize his instruments and a nurse fails to monitor the patient's vital signs throughout the procedure, and the patient develops complications as a result, both the doctor and the nurse may be charged with composite negligence.
- **Product liability** − A company makes a defective product that harms a customer, and the retailer also fails to thoroughly inspect the product before selling it. Liability for composite negligence may extend to both the manufacturer and the retailer.
- **Workplace Injury** − An employee sustains an injury at work as a result of both the employer's failure to provide adequate safety equipment and the employee's failure to adhere to appropriate safety procedures. Potential liability for composite negligence exists for both the employer and the employee.

ii. Assault and Battery -

Assault is an intentional, unlawful threat by word or act to do bodily harm to another person. In order to commit assault, the defendant must have made an apparent attempt to carry out their threat – they must have shown that they were capable of harming the victim if not prevented. This means that assaulting someone without actually injuring them is not considered an assault. However, making a threatening gesture or statement is enough to constitute assault.

Battery is an intentional physical contact with another person without their consent. To commit battery, the defendant must make direct physical contact with the victim without their consent or permission – this means that grabbing someone by the arm would be considered battery, as would punching them in the face. Again, making a threatening gesture or statement is enough to constitute battery.

Assault is defined as an attempt or threat to harm another person, while battery is the actual physical act of harming someone. To make a successful claim for assault or battery, the plaintiff must prove that the defendant had the intent to cause harm. This means that even if the defendant did not actually injure anyone – for example, by throwing a punch – he or she can still be liable if he or she had intent to cause harm. This can include anything from making unwanted contact to throwing something at someone. In addition to proving intent, the plaintiff must also show that the defendant committed an act of physical contact that was unwanted and harmful. This can be anything from touching someone without their consent to punching them in the face. Even if there is no injury inflicted as a result of this contact, it can still be considered battery under some circumstances. Finally, emotional distress damages may also be awarded in an assault or battery claim if they are deemed necessary to compensate for any mental anguish suffered as a result of being assaulted or battered. For example, if you were subjected to threats of violence on multiple occasions and eventually became afraid for your safety, you may have a valid claim for emotional distress damages.

Difference Between Assault & Battery

Assault	Battery
An act that creates an apprehension of imminent harmful or offensive contact.	An actual physical act that results in harmful or offensive contact with another person.
Psychological harm involves the threat of harm.	Physical harm involves actual contact.
Must be intentional or reckless; the defendant must intend to cause apprehension.	Must be intentional; the defendant must intend to make contact.

No physical contact is necessary; just the fear of it.	Physical contact is necessary; actual harm or offensive touching occurs
May lead to claims for emotional distress or punitive damages.	May lead to claims for physical injuries and medical expenses.

iii. Injuria Sine Damnum -

This maxim is just opposite of maxim Damnum sine injuria. It means there is breach or infringement of private legal right but no damage has been done. We can say here also as whenever there is an infringement of private legal right, the person in whom the legal right is vested is entitled to bring an action and may recover damages, although there may not be any real/actual loss or harm suffered by him.

- **Ashby v. White, (1703)**: Here, the plaintiff was a genuine voter who had gone to cast his vote but the defendant, a returning officer, wrongfully refused to register his vote. Although the candidate won the election to whom vote was to be given so it made no difference when the plaintiff didn't vote. When the matter came to the court, it awarded plaintiff on the ground that there was the violation of the plaintiff's legal right was an injury for which he must have a remedy and was actionable without proof of pecuniary damage.

Injuria sine damno refers to the violation of a legal right without resulting in any harm or damage to the plaintiff. It encompasses two categories of torts:

firstly, those that are actionable per se, meaning they can be pursued without demonstrating any actual damage or loss. For example, trespass to land can be legally addressed even if no harm follows the trespass.

Secondly, there are torts that can only be pursued upon proof of damage caused by a specific act. Injuria sine damno pertains to the former category, where it is unnecessary to establish that the plaintiff has suffered harm as a consequence of the act. In such cases, the key requirement for a successful legal action is the demonstration that the plaintiff's legal right has been violated, indicating the existence of injuria.

In the case of ***Bhim Singh v. State of Jammu & Kashmir (AIR 1986 SC 494),*** the petitioner, who served as a Member of the Legislative Assembly (MLA) in Jammu and Kashmir, was unlawfully detained by the police while en route to attend a session of the assembly. The petitioner was not presented before the magistrate within the stipulated time frame. Consequently, the legislator was unjustly deprived of his constitutional right to participate in the assembly session, constituting a violation of the fundamental right to personal liberty as enshrined in Article 21 of the Constitution. Although Bhim Singh had been released by the time the Supreme Court rendered its decision, the court, as a consequential relief, awarded him exemplary damages amounting to Rs. 50,000.

Injuria Sine Damno recognises that certain legal rights violations can be considered wrongful acts, irrespective of whether they cause direct harm or not. In such cases, the aggrieved party may still have a cause of action and seek legal remedies to protect their rights and seek appropriate redress.

iv. Act of God

An act of God is a general defense used in cases of torts when an event over which the defendant has no control over occurs and the damage is caused by the forces of nature. In those cases, the defendant will not be liable in law of tort for such inadvertent damage. Act of God defined as circumstances which no human foresight can provide against any of which human prudence is not bound to recognize the possibility, and which when they do occur, thus the calamities that do not involve the obligation of paying for the consequences that result from them.

The '**act of God**' defence is based on the tort law principle that liability must be founded on a fault and that a person cannot be penalized where the fault is that of a 'vis major' where all precautions were taken, and a casualty still occurred. According to ***Salmond*** an act of God includes those acts which a man cannot avoid by taking reasonable care. Such accidents are the result of natural forces and are incoherent with the agency of man. According to ***Lord Mansfield***, an act of God is defines as it is something in opposition to the act of man.

Two important essentials are needed for this defense are: There must be working of natural forces and the occurrence must be extraordinary and not one which could be anticipated and reasonably guarded against.

WORKING OF NATURAL FORCES

Ramalinga Nadar v. Narayana Reddiar (AIR 1971 Ker 197) the plaintiff had booked goods with the defendant for transportation. The goods were looted by a mob, the prevention of which was beyond the control of the defendant. It was held that every event beyond the control of the defendant cannot be said Act of God. It was held that the destructive acts of an unruly mob cannot be considered an Act of God. It was observed that: "Accidents may happen by reason of the play of natural forces or by the intervention of human agency or by both. It may be that be that in either of these cases, an accident may be inevitable. But it is only those acts which can be traced to natural forces and which have nothing to do with the intervention of human agency that could be an aid to be acts of God.

OCCURRENCE MUST BE EXTRAORDINARY

In the case of ***Nichols v. Marshland [(1876) 2 EXD 1],*** the defendant has a number of artificial lakes on his land. Unprecedented rain such as had never been witnessed in living memory caused the banks of the lakes to burst and the escaping water carried away four bridges belonging to the plaintiff. It was held that the plaintiff's bridges were swept by the act of God and the defendant was not liable.

While the Act of God defence provides legal protection against certain events, its applicability is not universal. Normal or foreseeable occurrences, even if they involve natural forces, may not warrant the defence.

v. Ubi Jus Ibi Remedium

Ubi jus ibi remedium is a Latin legal maxim meaning “where there is a right, there is a remedy.” This principle holds that for every violation of a right, the law must provide a means to address the grievance. Essentially, it establishes that the legal system should offer recourse whenever someone’s rights are infringed.

This maxim underscores the fundamental concept that rights are not merely theoretical but are backed by the legal authority to enforce them and seek redress when they are breached. It reflects the commitment of the legal system to uphold justice by ensuring that no wrong goes unremedied if there is a corresponding right recognised by law.

The maxim “where there is a right, there is a remedy” emphasises that rights without remedies are ineffective. This principle was central to the development of equity law. Common law traditionally provided limited remedies through specific writs, often leaving rights unenforced if the suit didn’t fit established writs.

Essentials of Ubi jus ibi remedium

The maxim "ubi jus ibi remedium," meaning "where there is a right, there is a remedy," is essential to the principle of justice. For this maxim to apply, several criteria must be met:

- **Existence of a Right :**The right in question must be recognised by the court of law. This means that the right should have a legal foundation, as rights without legal backing are not enforceable under this principle.
- **Clear Violation of Rights:** A wrongful act must have occurred that clearly violates the legal rights of a person. The wrongful act should be explicitly identifiable and directly linked to the infringement of the specific legal right.
- **Lack of Sufficient Relief:** The maxim comes into play when a person who has sustained injury has not been provided with adequate relief through other legal mechanisms. The absence of a suitable remedy elsewhere triggers the application of this principle to ensure justice.
- **Legal Injury:** The maxim applies if a legal injury has been inflicted on the person, meaning the infringement leads to the loss of a legally protected interest. If the damage caused is not legally recognised, "damnum sine injuria," or damage without legal injury, applies, highlighting that not all damages necessarily warrant a legal remedy.

Therefore, the maxim ubi jus ibi remedium ensures that rights, once violated, receive suitable remedies, affirming the justice system's commitment to uphold recognised rights effectively.

Donoghue v Stevenson[36]

This case is also known as **the snail in the beer bottle case**. This event took place in Paisley, Scotland in 1928, where Ms. May Donoghue was given a bottle of ginger beer which had bought by her friend. Since, the bottle was opaque in colour from outside nothing is visible inside. Donoghue consumed most of its contents before she became aware of the snail had been there inside the bottle and she later fell ill. Donoghue then took a legal action against the manufacture of the ginger beer, Mr. David Stevenson. The house of lord held that the manufacture owed a duty of care to her, which was breached because it was reasonably foreseeable that failure to ensure the product's safety would lead to her to consumers. There was also a sufficiently proximate relationship between consumers and product manufacturers.

[36] [1932] AC 562

vi. Res ipsa loquitor

Res ipsa loquitur is a principle in tort law that allows plaintiffs to meet their burden of proof with what is, in effect, circumstantial evidence. The plaintiff can create a rebuttable presumption of negligence by proving that the harm would not ordinarily have occurred without the negligence of the defendant, that the object that caused the harm was under the defendant's control, and that there are no other plausible explanations.

To prove res ipsa loquitur negligence, the plaintiff must prove 3 things:

1. The incident was of a type that does not generally happen without negligence
2. It was caused by an instrumentality solely in defendant's control
3. The plaintiff did not contribute to the cause

According to the Black's Law Dictionary the maxim is defined as the doctrine providing that, in some circumstances, the mere fact of an accident's occurrence raises an inference of negligence so as to establish a prima facie (at first sight) case. It is a symbol for the rule that the fact of the occurrence of an injury taken with the surrounding circumstances may permit an inference or raise a presumption of negligence, or make out a plaintiff's prima facie case and present a question of fact for the defendant to meet with an explanation.

Limitations on Res Ipsa Loquitur

An injury which would not occur without some fault of the plaintiff (i.e. certain types of slip-and-fall accidents) would necessarily fail the prima facie test, specifically the third element.

Roe v. Minister of Health[37]

In this case the plaintiff was admitted to the hospital for minor operations. The plaintiff was administered spinal anesthetics by injections of nupercaine and developed spastic paraplegia. The anesthetics were stored in glass ampoules immersed in a solution of phenol, and the judge found that the injuries were caused by phenol, which could have entered the ampoules through flaws not detectable by visual examination. The plaintiff contended that the doctrine of Res Ipsa Loquitur be applied against the hospital as the injury would not have occurred had the hospital not been negligent.

[37] [1954] 2 All ER 131

Houghland v. R.R. LOW (luxury of coaches) Ltd.

The plaintiff's suitcase was deposited with the defendant bus-owner's driver at the beginning of a journey. The bus broke down and the luggage was transferred by the owner's servants from the bus's boot to another bus. At the end of the journey the suitcase could not be found. The plaintiff was awarded damages and the court held that if the luggage had been lost then it was up to the defendant to prove that he was not negligent, which is nothing but Res Ipsa Loquitur.

vii.Damnum Sine injuria

No action lies for damage or loss, even when it is substantial in nature but has been caused by an act which does not breach/infringe some legal right of the plaintiff. The maxim damnum sine injuria has thus a meaning which says - damage/loss without breach or infringement of legal right.

Damnum sine Injuria means damage without legal injury. In essence, it refers to situations where a person or entity suffers harm or loss, but no violation of their legal rights has occurred. To establish a valid legal claim, it's generally necessary to demonstrate both harm (damnum) and the infringement of a legal right (injuria).

However, in cases of Damnum sine Injuria, even though there may be real harm or loss, there is no recognised legal injury because no legal rights have been unlawfully encroached upon. This principle underscores that not all harm results in a legal remedy, emphasizing the importance of distinguishing between moral wrongs and legal wrongs.

Damage in this context can take various forms, such as financial loss, physical harm, or damage to one's well-being.

In law, it's understood that there are no remedies for moral wrongs unless a legal right has been violated. Even if a defendant's actions were intentional, the court won't award damages to the plaintiff unless a legal right has been infringed.

For example, in the case of Mayor & Co. of Bradford vs. Pickles (1895), the Bradford corporation sued the defendant, claiming that digging a well on the defendant's land had reduced the water supply to the corporation's well, causing them financial losses due to insufficient water for the people within their jurisdiction. However, the court found the defendant not liable because they hadn't violated any legal rights of the plaintiff and the concept of Damnum sine Injuria was applied.

Another case, Gloucester Grammar School (1410), involved a schoolmaster opening a competing school, forcing the plaintiff to lower their fees. The plaintiff sought compensation for their losses, but the court ruled that they had no remedy because, although morally wrong, the defendant's actions hadn't violated any legal rights of the plaintiff.

viii. Innuendo

In defamation law, the concept of innuendo refers to the hidden or secondary meaning of a statement that is not immediately apparent. In some cases, a statement that appears to be innocent at first glance may be defamatory because of its latent or secondary meaning. For instance, a statement of praise or commendation could be considered defamatory in the context in which it is said.

Example of innuendo in defamation law can be found in the case of ***Tolley v J. S. Fry & Sons, Ltd*** (1931) A.C. 333. In this case, the defendants issued an advertisement featuring a caricature of a famous amateur golf champion playing golf with a packet of chocolate protruding from his pocket. A comic caddy in the ad said that the chocolate was excellent as the plaintiff's drive. Although the statement itself may seem harmless, the court found that the ad was defamatory because of its latent meaning, which suggested that the plaintiff endorsed the chocolate.

It is important to note that intention to defame is not necessary for a statement to be considered defamatory. Even if the person making the statement believed it to be innocent, if the words are considered defamatory by those to whom the statement is published, then defamation may have occurred.

The scope of innuendo is extremely wide and different in various scenarios

1. Protection of the image and reputation of an individual
2. Avoids publishing of false or misinterpreted information
3. Gives importance to framing the message/advertisement in a clear and better way
4. Regulation of the data accessible to people
5. Stronger amendments in laws like "right to freedom of speech", "right to privacy", etc.

ix. Qui Facit per alium facit per se

In general, an individual is responsible for his actions, but in few cases, the law holds him vicariously liable for the actions of another, regardless of whether or not he is at fault.

Because of their relationship, this obligation exists. Qui facit per alium facit per se is an essential principle that tells us about "**liability by relation.**"

The Latin legal maxim "**Qui facit per alium facit per se**" means "he who does an act through another is deemed in law to be have done it himself. "However, for liability to arise, two parties must have a certain kind of relation. Liability of the principal for the act of his agent, liability of spouses for each other's torts, and liability of the master for the tort of his servant are all typical forms of such liability. Without a doubt, if a servant or agent commits a tort beyond the jurisdiction of his organization or job and unrelated to it, the principal will not be responsible until he first approved or subsequently ratified the act. He is as much a stranger to his master as any third party beyond the scope of his work.

Examples of this kind of liability include:

- The responsibility of a principal for their agent's actions.
- The liability of spouses for each other's wrongdoing.
- The liability of an employer for their employee's misconduct.

Case Laws:

- In ***Deo Narain Rai and Anr. vs Kukur Bind and Ors***[38]., the Allahabad High Court held that "In accordance with the maxim Qui Facit Per Alium Facit Per Se, which means – he who does an act through another in the eyes of the law, does it himself. A signature by the authorized agent of a mortgagor is sufficient. This is an old and well-recognized maxim, and, as it seems to me, ought to prevail, unless the Legislature makes it reasonably clear that its operation was intended to be excluded in the interpretation of a Statute. At common law where a person authorizes another to sign for him, the signature of the person so signing is the signature of the person authorizing it."

- In ***Mannasingh and Anr. vs State, the Madhya Pradesh*** High Court held that "Criminal Jurisprudence does not recognize the principle of vicarious liability; the master cannot be punished for the actions of his servant unless the master abetted it or there is some legislative enactment which provides otherwise. The maxim of qui Facit per alium, facit per so, which means that he who acts through another is deemed to act

[38] **(1902)ILR 24ALL319**

in person is a doctrine of Civil, law and does not belong to the domain of Criminal Jurisprudence."

x. Trespass to Goods

If, there is a direct act which causes damage to goods by seizure or removal to someone then it is called as trespass to goods. For example, removing a tyre from a motor car, Scratching the panel of a coach, destroying or injuring the goods, beating or killing the animals or infecting them with the disease or chasing the animals to make them run away from the possession of owner or killing a dog by giving it poisoned meat.

For trespass to goods, it is essential that the injury and damage must be direct and not consequential. It is further required that the plaintiff must have the possession of goods either actual or constructive or a legal right to the immediate possession at the time of trespass. A trespass to goods is also actionable per se i.e., without any proof of actual damage.

Kirk v. Gregory, (1876) 1 Ex D 55: In this case, on a person's death, his sister-in-law removed some jewellery from his dead body and kept it in another room with a reasonable belief that the jewellery will be safer in another room since people will come to pay homage to deceased. But, it was her mistaken belief and the jewellery got stolen from that room. Sister-in-law was held liable for trespass to the jewellery. Earlier, it was not essential for the plaintiff to prove intention or negligence on the part of defendant in an action for trespass, but now in the light of recent cases of trespass to person, it appears that the plaintiff should prove intention or negligence of the defendant in respect of trespass to goods.

National Coal Board v. Evans, (1951) 2 KB 861.: In this case, the defendants had employed certain independent contractors to make excavations on their land. Beneath the land the plaintiff's predecessor had laid some electric cables. The defendants had no knowledge about the underlying cables. In course of excavations, the cable got damaged. The defendants were not held liable for this damage as it was not known to them.

The wrongful attachment by itself amounts to trespass to goods and is actionable. The gist of the action is the wrongful attachment and the plaintiff whose property is wrongfully attached before judgment is entitled to damages even though he has failed to prove special damages.

xi. Malicious Prosecution

Suppose a person under the influence of an ill or improper motive institutes a judicial proceeding against another person without likely cause to sustain it. In that case, it can be defined as malicious prosecution as observed by the court during the case of ***West Bengal State Electricity Board v Dilip Kumar Ray.***

Malicious prosecution is likely to occur when one party knowingly and intentionally initiates any baseless litigation against the other person.

This is done to intimidate, harass, defame, or otherwise injure the other party. In response, the injured party can file a malicious prosecution case in a civil legal proceeding.

Examples of malicious prosecution may be:

- An unscrupulous prosecutor filing false charges against a political rival
- A corporation filing a frivolous lawsuit against a small business in order to take out the competition

Malicious prosecution provides an essential check on potential abuses. This is because prosecutors have discretion over which cases are pursued. Similarly, private citizens are free to file lawsuits against anyone.

Malicious prosecution may be brought by someone against whom a criminal or civil action has proceeded:

1. Without probable cause (reasonable grounds); and
2. With malicious intent

The Elements of a Malicious Prosecution Claim

Courts generally agree on the elements required for a malicious prosecution claim. But some states combine elements or arrange them differently. The six elements of this claim are as follows:

1. The institution or continuation of a civil or criminal legal proceeding against the plaintiff;
2. Done by, or abetted by, the defendant (the prosecutor or plaintiff in the malicious action);
3. Termination of the prior proceeding in the plaintiff's favor. For instance, the case brought by the prosecutor or plaintiff in the malicious action was dismissed;

4. Absence of probable cause for instituting the prior proceeding;
5. Malice as the primary purpose for the prior action; and
6. Injury or damage to the plaintiff as a result of the prior action

Remedies for Malicious Prosecution

Being the subject of malicious prosecution can cause a wide range of injuries. Injuries can result from unsubstantiated criminal charges or a bogus civil claim. In either case, the plaintiff may claim compensatory and sometimes punitive damages. Punitive damages are designed to punish egregious behavior.

Compensatory damages consist of the actual damages that were a direct result of the malicious prosecution. This may include pain and suffering and other non-monetary injuries. Also, special (quantifiable) damages may be claimed, including:

- Lost earnings
- Medical expenses
- Additional domestic costs, such as childcare

xii.Inevitable Accident

Meaning of Inevitable Accident

When harm is caused while carrying out a proper conduct, done with all reasonable care, for whatever unavoidable reason, and as a result, the damage does not give rise to a cause of action, the defense of "inevitable accident" is possible. It is one of the many common defenses available to the defendant under tort law and is founded on the idea that they will not be held responsible if the plaintiff was damaged despite the defendants' lack of malicious intent.

Essentials of Inevitable Accident

The following requirements must be satisfied in order to assert the tort defense of "inevitable accident" -

- There must be an accident

- The accident must be unexpected, unintended, and unavoidable; and care, caution, and skill as would be reasonable under the circumstances must have been used.
- As a result, there must not have been any negligence on the side of the person, and another person must have suffered suffering, injury, damage, or loss as a result.

Limitations of Inevitable Accident

The following torts and tort law principle(s) are excluded from the defense of inevitable accident, which places significant restrictions on their use −

- **Trespass:** In trespass situations, the argument of inevitable accident is inadmissible. This is so that the plaintiff, and not the defendant, bears the burden of proof.

- **Principle of Strict Liability:** In situations when there is absolute liability, the "inevitable accident" defense has no place. This is because strict responsibility is unaffected by factors such as carelessness, purpose to commit the conduct, knowledge of the wrongdoing, and so forth. In this situation, culpability is solely based on the possibility of serious harm to others, which cannot be prevented, not even by taking reasonable precautions.

- **Negligence:** Similar to trespass, the argument of an unavoidable accident is inadmissible in negligence proceedings. This is so that the plaintiff is not left with the task of showing the defendant's negligence**.**

In ***Fardon v. Harcourt***- [39]Rivington, the defendant left his car in the street and his dog inside. That dog was still calm and placid. The dog, which had been barking and leaping about in the vehicle, broke a glass panel while the plaintiff was walking by the car, and a fragment of the glass hit the left eye of the plaintiff, which had to be removed. It was concluded in an act for damages that the plaintiff could not be compensated as a motor car with a dog in it was not a matter that was risky in itself, and there was no error in not exercising caution against it because the accident was so improbable.

In ***Holmes v. Mather***[40], while the horses of the defendant were guided by his servant on a public highway, the barking of a dog made the horses run away and they became so

[39] (1932) 146 LT 391
[40] (1875) LR 10

insurmountable that the servant could not deter them, but could direct them to some extent. When attempting to turn a corner safely without luck, the servant directed them in such a manner that they knocked down and wounded the complainant who was on the highway without the servant meaning it. It was considered that no action was necessary by the plaintiff for the servant had done his best under the situation.

xiii. Extra Judicial Remedies

When a person can lawfully avoid or remedy himself without the intervention of courts, these remedies for torts are called extra-judicial remedies for torts. In this, the parties take the law in their own hands. Extra Judicial Remedies for torts refers to those remedies where an aggrieved person can take such actions that can undo the damage that has happened to him, without the court's intervention.

There are 5 types of extra judicial remedies for torts that are available to people who have suffered from some civil wrong. These include :

a. **Expulsion of trespasser :** A person can use a reasonable amount of force to expel a trespasser from his property.

   Illustration: A trespass into B's property. B has the right to use reasonable force to remove him from his property and re-enter himself.

b. **Re-entry on land:** The owner of a property can remove the trespasser and re enter his property, again by using a reasonable amount of force only.

c. **Re-caption of goods:** The owner of goods is entitled to recapture his/her goods from any person whose unlawful possession they are in.

   Illustration: If A wrongfully acquires the possession of B's goods, B is entitled to use reasonable force to get them back from A.

d. **Abatement:** In case of nuisance, be it private or public, a person (the injured party) is entitled to remove the object causing nuisance.

   Illustration: A and B are neighbours. Branches of a tree growing on A's plot enter B's apartment from over the wall. After giving due notice to A, B can himself cut or remove the branches if they're causing him nuisance.

e. **Distress Damage Feasant:** Where a person's cattle/other beasts move to another's property and spoil his crops, the owner of the property is entitled to take possession of the beasts until he is compensated for the loss suffered by him.

xiv. Volenti non fit Injuria

The doctrine of *Volenti non-fit injuria* means, *"to a willing person, no injury is done"* It means if a person willingly consents to the infliction of harm upon itself he/she is not entitled to get any remedy under the Law of torts. Any harm suffered voluntarily by anyone does not amount to legal injury and the same is not actionable by the law of torts. In cases where the plaintiff gives his consent to suffer some harm upon himself in such cases, he is not entitled to remedies and his consent acts as a good defense for the defendants.

For example, A invites B to his home for dinner, so here A cannot sue B for trespass. As A has voluntarily inflicted some harm upon itself.

However, it has to be kept in mind that an act causing harm must not go beyond the consented limit. In the game of Football players impliedly consents to the normal course of injury but it does not mean that they cannot sue for an injury that is caused deliberately by other players. An action of defamation cannot be brought by a person who voluntarily agrees to the publication of a matter defamatory of himself. No man can enforce a right that is voluntarily waived or abandoned. Consent of waiving his/her right can be express or implied. For the defense to be available it has to be proved by the defendants that the plaintiff was fully aware of the risk involved and its extent. Mere knowledge of the risk is not enough; the plaintiff needs to give his consent for sustaining that harm.

The defense of *Volenti non-fit injuria* was successfully pleaded in the case ***Padmavati v Dugganika.*** In this case, two strangers took a lift in a jeep while the driver was taking jeep for filling petrol. Unexpectedly, one of the bolts fixing the right front wheel came out resulting in two strangers were thrown out of the jeep and were seriously injured. One of them even died as a consequence of the incident. It was held by the court that neither driver nor master is liable due to two reasons i.e.

First, it was a clear accident.

Second, the strangers voluntarily entered into a jeep due to which defense of *Volenti non-fit injuria* can be successfully pleaded

Essential elements of *Volenti non-fit injuria*

To take the successful defense of *Volenti non-fit injuria*, it becomes necessary to have certain essentials elements. These are as follows:

- ***Free Consent***

To have this defense available it is important to prove that the consent of the defendant was free and was not influenced by anything. If the consent of the plaintiff has been obtained by fraud or under compulsion or some mistaken impression, such consent does not serve as a good defense.

- **Consent must not be obtained by fraud**

Consent obtained by fraud does not serve as a good defense. However, mere concealment of facts may not be such a fraud as to vitiate consent. The most famous case under this head is ***R. v. Williams***. In this case, the accused music teacher was held guilty of rape. He had sexual intercourse with a girl student of 16 years by making her believe that his act will improve her voice. The victim misunderstood the nature of the act and gave her consent believing that the act will improve her vocal cord. The court held the accused guilty of rape and the defense of *Volenti non-fit injuria* was not allowed as the consent was taken by fraud.

- **Consent must not be obtained under compulsion**

There are circumstances when an individual does not have freedom of choice and consent given under such circumstances does not amount to proper consent. For example, a person may be compelled by some situation to knowingly undertake some risk that he would not have undertaken if he had a free choice.

- **The defendant must not be negligent**

Generally, when the plaintiff consents to take some risks the normal presumption is that the defendant is not going to be negligent. If there is any sort of negligence from the defendant's side then he can be made liable for the act and the doctrine of *Volenti non-fit injuria* is not applicable. For example, if an individual consent to an operation and the operation is unsuccessful because of the surgeon's negligence then the surgeon can be made liable for this, as an individual has not consented to Surgeon's negligence.

- ***Mere Knowledge does not imply assent***

To have the correct application of the doctrine of *Volenti non-fit Injuria* two important points needs to be proved by the defendants. i.e. Plaintiff was aware of the risk present there and had consented for the same to suffer the harm. In case the plaintiff was only aware of the risk but has not given his consent then in such a situation the defense of *Volenti non-fit Injuria* cannot be taken. In simple words just because the plaintiff was aware of the harm does not imply that he/she has consented to suffer the harm.

Limitations of the Doctrine

The scope of the applicability of the doctrine i.e. *Volenti non-fit injuria* has been limited by certain things. The limitations of this doctrine are as follows:

1. Rescue Cases
2. Illegal Acts
3. Breach of Statutory Duty

xv. Abatement of Nuisance

The word "nuisance" is derived from the French word "nuire", which means "to do hurt, or to annoy". One in possession of a property is entitled as per law to undisturbed enjoyment of it. If someone else's improper use in his property results into an unlawful interference with his use or enjoyment of that property or of some right over, or in connection with it, we may say that tort of nuisance occurred. In other words, Nuisance is an unlawful interference with a person's use or enjoyment of land, or of some right over, or in connection with it. Nuisance is an injury to the right of a person in possession of a property to undisturbed enjoyment of it and result from an improper use by another person in his property. According to Salmond, "the wrong of nuisance consists in causing or allowing without lawful justification the escape of any deleterious thing from his land or from elsewhere into land in possession of the plaintiff, e.g. water, smoke, fumes, gas, noise, heat, vibration, electricity, disease, germs, animals"

There are several remedies available for nuisance including injunction, damages and abatement.

Abatement of nuisance involves taking steps to remove or eliminate the source of the nuisance.It means the summary remedy or removal of a nuisance by the party injured without

having recourse to legal proceedings. It is not a remedy which the law favors and is not usually advisable. E.g. - The plaintiff himself cuts off the branch of tree of the defendant which hangs over his premises and causes nuisance to him.

xvi. Actionable Per Se

Actions that do not require the allegations or proof of additional facts to constitute a cause of action. Such a tort is actionable simply because it happened. In such actions, the plaintiff does not have to prove that he suffered any damages in order to have a cause of action. Tort claims normally require proof of damages. If you haven't suffered any loss, you have no claim. A tort that is actionable per se does not require proof of damages to be actionable; such a tort is actionable simply because it happened. Defamation and trespass are two class examples of torts that are actionable per se.

There are various important case laws which talks about "actionable per se" but we will discuss two most important case laws as given below−

- In ***Ashby v. White***, the defense officer stopped the plaintiff from casting his ballot even though he was fully eligible to do so. Despite this, the complainant planned to vote for the candidate who won the election. In this case, the court cited the dictum actionable per se and determined that the defense officer is accountable for denying the plaintiff the opportunity to exercise his right to vote.
- The maxim was used in the case of ***Srikant Roy v. Satcori Shaha***, and the plaintiff was deemed accountable for providing false testimony during the course of the legal process.

10.Discuss the rule in Rylands v. Fletcher. How is the rule of strict liability different from the rule of absolute liability? State the exceptions to the rule of Rylands v. Fletcher.

The principle of ***Rylands v. Fletcher (1868)*** establishes a significant doctrine in tort law, forming the foundation for the rule of strict liability. It emerged as a mechanism to hold individuals accountable for harm caused by the escape of dangerous substances from their property, regardless of intent or negligence. This landmark case has influenced the evolution of liability laws globally.

Facts:

The defendant got a reservoir constructed over his land to provide water to his mill through an independent contractor. The old disused shafts which had been present under the reservoir were not noticed by the contractors as a result, they remained unblocked. When water was filled in the reservoir, it burst through the shafts and gushed to the adjoining coal mines of the plaintiff, damaging his property.

The defendant who possessed no knowledge of the shafts was not negligent on his part.

Issues:

1. Was the defendant's use of land unreasonable?
2. Should he be made for all the damages caused to the plaintiff?

Judgement:

The Court of Liverpool

The Court of Liverpool sided with the defendant declaring him not guilty and further held that there was neither any trespass nor any nuisance.

Later, an arbitrator who was appointed in December 1864 by court order also declared that the defendant can't be held liable as he wasn't aware of the mine shafts, further it was the independent contractors who were negligent as they failed to block the shafts.

Court Of Exchequer Pleas

The Court of Exchequer entertained the appeal from the lower court and sided with the view that the defendant could not be held liable for the acts of the independent contractors. However, they had mixed opinions on the matter of whether the defendant was liable for the damage sustained by the plaintiff or not.

Court Of Exchequer Chamber

Unsatisfied with the decision of the lower court, Fletcher appealed to the Court of Exchequer Chamber. The six judges of the chamber overturned the decision of the lower court establishing the principle of Strict Liability which states that if a person makes non-natural use of land or brings any dangerous thing onto his premises which on escaping causes damage, then that individual will be liable for all the damage sustained by the plaintiff.

House Of Lords

The House of Lords did not entertain Ryland's appeal and agreed with the verdict given by the Court of Exchequer Chamber

The rule, articulated by ***Blackburn J***., states:

"A person who for his own purposes brings onto his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape."

Essential Elements of Strict Liability

There must be the presence of 3 essential elements to constitute strict liability. They are as follows:

i. **Dangerous Thing:** Some dangerous thing must have been brought by a person on his land. Some examples of Dangerous things are- toxic gases, rusty wires, explosives, etc. *illustration*: the defendant planted poisonous trees on his land whose branches protruded into the neighbour's house. The plaintiff's cattle died after consuming the leaves of the trees. The court held the defendant liable for the same.
ii. **Escape:** The dangerous thing brought by a person on his land must also escape the premises to be out of the reach and control of the defendant. In the case of ***Mrs Read v Lyons & Co***, it was held that since there was no escape of dangerous things, therefore, there was no liability on the part of the defendant.
iii. **Non-natural Use of Land:** Finally, to make a person strictly liable, the defendant must make a non-natural use of his land which must be bringing with it increased danger to others. In the case of ***T.C. Balakrishnan Menon v. T.R. Subramanian***, it was held that the use of explosives in an open ground even on a day of the festival is a non-natural use of land.

Absolute Liability

If an industry or enterprise is engaged in some inherently dangerous activity from which it is deriving commercial gain and that activity is capable of causing catastrophic damage then the industry officials are absolutely liable to pay compensation to the aggrieved parties. The industry cannot plead that all safety measures were taken care of by them and that there was

negligence on their part. They will not be allowed any exceptions neither can they take up any defence like that of Act of God' or Act of Stranger'.

Absolute Liability (based on no-fault liability)evolved in India in the ***MC Mehta v. Union of India (1986)*** Case which is also known as the Oleum Gas Leak Case. The judgement of the case came at a time when the country was coming to terms with the Bhopal Gas Tragedy. This was a very important landmark judgment that brought in a new rule in the history of the Indian Law. The rule held that where an enterprise is engaged in a hazardous or inherently dangerous activity and it harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, the enterprise is strictly and absolutely liable to compensate to all those who are affected by the accident.

In ***M.C. Mehta v Union of India***, In the city of Delhi, there was severe leakage of oleum gas on the 4th and the 6th of December, 1985. This took place in one of the units of Shriram Foods and Fertilizers Industries belonging to the Delhi Cloth Mills Ltd. due to this, an advocate practicing in the Tis Hazari Court had died and many others were affected by the same. The action was brought through a writ petition by way of public interest litigation (PIL).

In Indian law, public interest litigation means litigation for the protection of the public interest. It is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party. It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public interest litigation is the power given to the public by courts through judicial activism. However, the person filing the petition must prove to the satisfaction of the court that the petition is being filed for a public interest and not just as a frivolous litigation by a busy body.

The Supreme Court took a decision to evolve a new rule that fit to the economic and social conditions prevailing in India. The rule of absolute liability was then formed in preference to the rule of strict liability.

The rule clearly held that where an enterprise is engaged in a hazardous or inherently dangerous activity and it harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, the enterprise is strictly and absolutely liable to compensate to all those who are affected by the accident and such liability

is not subject to any of the exceptions which operate vis-Ã -vis the tortious principle of strict liability under the rule in ***Rylands v Fletcher.***

Bhagwati, C.J. observed in this context –

"This, rule (Ryland v. Fletcher) evolved in the 19th century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norm and the needs of the present-day economy and social structure. We do not feel inhibited by this rule which was evolved in the context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast-changing society and keep abreast with the economic developments, taking place in this country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot allow our judicial thinking to be constrained by reference of the law as it prevails in England or for the matter of that in other foreign legal order. We in India cannot hold our hands back and I venture to evolve a new principle of liability which English courts have not done."

Difference Between Strict Liability and Absolute Liability

The difference between Strict and Absolute liability rules was laid down by Supreme Court in ***M.C. Mehta v. Union of India***, where the court explains as:

Firstly, In Absolute Liability only those enterprises shall be held liable which are involved in hazardous or inherently dangerous activities, this implies that other industries not falling in the above ambit shall be covered under the rule of Strict liability.

Secondly, the escape of a dangerous thing from one's own land is not necessary; it means that the Rule of absolute liability shall be applicable to those injured within the premise and person outside the Premise.

Thirdly, the rule of Absolute liability does not have an exception, whereas as some exceptions were Provided in rule of Strict Liability. Also, in the case of ***Union of India V. Prabhakaran Vijay Kumar*** the View of constitutional bench was that the rule of MC Mehta is not subject to any type of exception.

Fourthly, the Rule of Ryland V Fletcher apply only to the non-natural use of land but the new rule of Absolute liability applies to even the natural use of land. If a person uses a dangerous

substance which May be natural use of land & if such substance escapes, he shall be held liable even though he has Taken proper care.

Further, the extent of damages depends on the magnitude and financial capability of the institute.

Supreme Court also contended that , The enterprise must be held to be under an obligation to ensure That the hazardous or inherently dangerous activities in which it is engaged must be conducted with The highest standards of safety and security and if any harm results on account of such negligent Activity, the enterprise/institute must be held absolutely liable to compensate for any damage caused And no opportunity is to given to answer to the enterprise to say that it had taken all reasonable care And that the harm caused without any negligence on his part.

Exceptions

However, in Ryland v/s Fletcher, certain exceptions were also stated in which rule of strict liability cannot be applied. Many other exceptions were also added in later cased.

i. Plaintiff's own default:

If the damage is caused by plaintiff's own default or wrongdoing then the rule of strict liability can't be applied. For instance, in Ponting v. Noakes, the plaintiff's horse itself intruded in defendant's property and ate poisonous leaves. The Court held that as the damage is caused by plaintiff's own fault as he let his horse intrude into the property of defendant (either purposely or via negligence). Had the horse not intruded into the property of plaintiff, the damage would not have been caused. Hence, the court held that in this case the plaintiff didn't have any right to complaint.

ii. Act of God:

The term "Act of God' has been defined by ***Blackburn J.*** in ***Rylands V Fletcher.*** According to him "Circumstances which no human foresight can provide against, and of which human prudence is not bound to recognize the possibility" are called Act of God. The same can be understood via reference of Nichols V Marsland[v], in which the defendant created artificial lakes on his land. But that year, there happened to be an extraordinary rainfall, highest in human memory, as a result of which embankments of lakes gave away and damaged plaintiff's four bridges. The Court held that the

defendant was not guilty as it was an act of God as it was totally unforeseen and had happened because of supernatural forces without any human intervention.

iii. Consent of the Plaintiff:

According to this exception, if the plaintiff has consented to the accumulation of dangerous thing on the defendant's land, then the plaintiff does not have any right of complaint and the rule of strict liability could not be applied. It's similar to the rule of Volenti non fit injuria. The consent of the plaintiff can be express or implied. The consent is express, when the plaintiff assertively gives his consent. For example, A and B lives in the same house. A wants plant a poisonous tree in the house for research purpose and ask B if he is OK with that. B agrees. Here, the consent given is express. On the other hand, consent can also be implied. Strictly talking of strict liability, consent is implied when the source of danger is for the 'common benefit' of both plaintiff and defendant. For instance, in ***Carstairs V Taylor***, the plaintiff hired ground floor of defendant's house on rent.

There happened to be a water tank on the roof for supply of water. One day, the water from the tank leaked and damaged plaintiff's goods. It was held that the defendant's can't be held liable as plaintiff impliedly had consented to the accumulation of dangerous thing (as the thing was installed for the common benefit of both plaintiff and defendant)."

iv. Act of third party:

If the damages have been caused by the act of a third party or stranger over whom defendant has no control, then rule of strict liability can't be applied. For instance, in ***Box V Jubb***, some strangers blocked the drain of defendant's reservoir as a result of which the reservoir overflowed and damaged plaintiff's property. The Court held that the defendant could not be held liable as the damage has been caused by the act of stranger.

It must be noted that if the act of stranger can be foreseen and prevented by the defendant, then the defendant has a duty to stop it. Failure on part of defendant to do so would make him liable.

v. Statutory Authority:

If the damage has been caused by an act which the legislature authorizes then; the rule of strict liability can't be applied. For example. If a railway line is constructed by a Statute and some damage is caused by it, then the person can't use the rule of strict liability. In ***Green V Chelsea Waterworks Co***, the defendant company had a statutory duty to

maintain continuous supply of water. A main belonging to the Company burst without any negligence on its part, as a consequence of which the plaintiff's premises were flooded with water. It was held that the company was not liable as the company was engaged in performing a statutory duty.

The landmark judgment of ***Rylands V Fletcher*** played a vital role in law of torts. The rule of strict liability propounded in this case has been instrumental in solving many disputes where the damage is caused without any negligence on part of defendant. In this fast-changing world where industrialization and technological advancements are taking place rapidly, it is necessary that the owner who makes use of dangerous things shall be made onerous to bear the responsibility of every damage which that thing may cause.

The rule of strict liability helps us in achieving that objective. It places an additional burden on the owner to bear the responsibility of all catastrophes that may be caused by the dangerous thing he has bought. Moreover, it also ensures that every owner exercise proper care in handling such dangerous properties.

11.Discuss the defenses for Trespass. Discuss Trespass ab initio with decided case laws.

Defences to Trespass to Person

i. **Valid Arrest:** Lawful detention of a person if there is sufficient reason to believe that the person is indulged in an offence or involved in a wrongdoing does not amount to false imprisonment. A person can also be lawfully arrested for arresting a citizen without any justified reason.

ii. **Consent:** If a person *voluntarily consents* to be trespassed then such act would not amount to trespass. In the case of ***Robinson v. Balmin New Ferry Company Ltd.***,[41] the plaintiff wished to take a ferry across a river. To get to the wharf from which the ferry would depart, he had to go through the turnstile. The turnstile was administered by the defendants. The notices on the either side of the turnstile mentioned that one penny would be charged to use the turnstile. However later the plaintiff changed his mind and decided to go through the turnstile. The defendants again demanded one penny which the plaintiff refused to pay. As a result, the defendants prohibited him from using the turnstile. The

[41] [1910] AC 295

plaintiff alleged that the defendants had falsely imprisoned him. However, the court dismissed the plaintiff's contention and stated that he agreed to take the risk that if he did not pay a penny, he will not be allowed to return, and so detention by the defendants was not held to be false imprisonment.

iii. **Probable Cause:** Sometimes imprisonment is justified on the basis that it was alleged that the defendant was a participant in a crime. Such imprisonment is not considered as false imprisonment.

iv. **Self Defence:** It is lawful for any person to use reasonable amount of force for *self-protection or protection of any other* person or property against any unlawful use of force. However, use of such force should be reasonable and proportionate. In the case of ***Cresswell v. Sirl***[42], the son of defendant shot plaintiff's dog because the dog attacked his pigs and sheep. The plaintiff sued the defendant. The Court of Appeal held there was no other way to save animals other than shooting the dog and therefore neither the defendant nor his son was held liable for the killing of the dog.

Defences against Trespass to Property

i. *Consent*: The act of intervention into the land or goods would not amount to trespass if the possessor gives consent to the plaintiff voluntarily. In other words, the consensual act of intervention would amount to trespass if such consent was induced by fraud, intoxication or an incompetent person.

ii. *Public Necessity*: When a person intentionally goes into the property of other person for the sake of protecting the community from an immediate and imperative harm, then such interference would not be considered trespass. In the case of ***Esso Petroleum Co v Southport Corporation[18]***, the captain of a ship committed trespass by letting oil to flood a shoreline. It was necessary to protect his ship and crew members. Since this was a necessity, the defence of public necessity was accepted. However, this defence would not be granted when the person had alternative courses of action.

iii. *Justification by Law*: It is a defence in those situations where a person is permitted to enter into the premises of someone by the way of Statute or law of the land. For example, police officers, income tax officers etc.

[42] (1948) 1 K.B. 241

Trespass ab initio is a fundamental legal doctrine that addresses situations where a person initially has the lawful authority to enter another's land but later commits an act that transforms this lawful entry into a tortious one. This concept is critical in property law, as it provides a framework for addressing misconduct by individuals who abuse their legal right to access someone else's property.

Definition of Trespass Ab Initio

Trespass ab initio translates to "trespass from the beginning." It occurs when an individual, who has been granted legal authority to enter a property, subsequently engages in wrongful conduct (misfeasance) that retroactively invalidates the initial lawful entry. The individual is then considered to have been trespassing from the outset and is liable for any resulting damages.

Conditions for Applying Trespass Ab Initio

For the doctrine of trespass ab initio to be applicable, certain conditions must be satisfied:

- **Authority Given by Law**: The individual's entry onto the property must have been authorised by law. This could be through a statutory right, a warrant or another form of legal permission.
- **Subsequent Misfeasance:** The individual must commit an act of misfeasance—wrongful conduct or misconduct—after the initial entry. Mere non-feasance or failure to act, does not qualify. The wrongful act must be significant enough to retroactively make the original entry unlawful.

  The Six Carpenters' Case (1610): One of the most notable cases illustrating the principle of trespass ab initio is the Six Carpenters' Case (1610). In this case, six carpenters entered an inn by lawful authority and consumed food and drink. However, they refused to pay for what they had consumed. Despite their refusal to pay, the court ruled that they were not liable under the doctrine of trespass ab initio. The court laid down three major principles from this case:
- **Abuse of Authority**: If a person abuses an authority granted by law, they become a trespasser ab initio. This means that any misconduct following the lawful entry renders the initial entry unlawful.
- **Removal of Pleaded Authority**: In an action of trespass, if an authority is pleaded as a defence, the subsequent abuse of that authority can negate the defence. This

principle allows for the authority initially granted to be invalidated by the wrongful conduct.

- **Non-Feasance Exclusion**: Mere non-feasance or failure to act, does not constitute such abuse as to render a person a trespasser ab initio. The misconduct must be an affirmative act of wrongdoing.

Misfeasance must be such that will render the presence of the defendant on the premises as wholly unjustified. The case of ***Elias v. Pasmore*** illustrates the point. In that case, the defendants, certain police officers, entered the plaintiff's premises to make a lawful arrest. There they removed certain documents without having any lawful authority for that, which was, therefore, an act of misfeasance. By their act of misfeasance, their presence there had not become wholly unjustified because the arrest, i.e., the lawful purpose, had yet to be accomplished. They were held trespassers only with regard to the documents which they had seized and not trespassers ab initio to those premises.

In ***McGuire v. United States, 273 U.S. 95 (U.S. 1927),*** a search warrant was issued to revenue agent officers to enter and search the premises possessed by Mcguire. The officers acting under the warrant searched the premises discovering several gallons of intoxicating liquor which they seized. They destroyed the liquor without the court order or other legal authority except one quart of whisky, which they retained as evidence. The court held that the officers by destroying the seized liquor became trespassers ab initio. Thus, they lost the protection and authority conferred upon them by the search warrant. However, the court ruled that the sample of liquor can be used as evidence.

Modern Implications of Trespass Ab Initio

While the doctrine of trespass ab initio originates from common law, its principles continue to have relevance in modern legal systems. Understanding this doctrine is essential for legal professionals dealing with property rights, as it helps address scenarios where individuals misuse their lawful authority.

Application in Landlord-Tenant Disputes

Trespass ab initio can play a significant role in landlord-tenant disputes. For instance, if a landlord enters a tenant's property with legal permission (such as for repairs) but then engages in misconduct (such as damaging the tenant's property), the landlord's initial lawful

entry can be deemed trespass ab initio. The tenant would then have grounds to seek damages for both the unlawful entry and the subsequent misconduct.

Law Enforcement and Trespass Ab Initio

The doctrine also applies to law enforcement officers. If an officer enters a property with a warrant but then commits an act of misconduct (such as using excessive force or conducting an unlawful search), the initial lawful entry can be retroactively deemed trespass ab initio. This principle ensures that law enforcement officers are held accountable for any abuse of their legal authority.

Trespass ab initio is a vital doctrine in property law, providing a mechanism for addressing the abuse of lawful authority. By understanding the conditions required for its application and the principles established in key cases like the Six Carpenters' Case, legal professionals can better navigate property disputes and ensure that wrongful conduct is adequately addressed. While the doctrine has its limitations, its continued relevance in modern law underscores its importance in protecting property rights and holding individuals accountable for their actions.

12. What do you understand by the term Tort ? Is it the law of Tort of the law of Torts?

In common parlance the tort is an injury or wrong independent of implied contract, as by assault, libel, malicious prosecution, negligence, slander or trespass or seduction.

The term 'tort' is French in origin which is synonym to 'wrong' in English version. This word has originated from the Latin word 'tortus' which means to twist and implies conduct which is tortious or twisted. The Roman word 'delict' and Sanskrit word 'Jimha' depict same the meaning. The concept of tort appears when a breach of some duty is caused which is independent of implied contract giving rise to a civil cause of action and for which compensation can be claimed and a damage is recoverable.

Definition of Tort

Many authors have defined the term 'tort' but so far, its definition is still in a growing stage and it would be difficult to accept any single definition which could define tort in wholesome manner. There are shortcomings in each of the definitions but we will try here to find those missing links and bridging the gaps with our own suggestions.

A workable definition of tort may be as:-A civil wrong which is independent of implied contract for which the appropriate remedy is an action for unliquidated damages.

- **Salmond and Heuston**: A tort is a 'civil wrong for which the remedy is a common law action for unliquidated damages, and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation.'[1]
- **Clerk and Lindsell:** 'A tort may be described as wrong independent of contract, for which the appropriate remedy is common law action'.[2]
- **Sir Fredrick Pollock:** 'The law of torts in civil wrongs is a collective name for the rules governing many species of liability which, although their subject-matter is wide and varied, have certain broad features in common, are enforced by the same kind of legal process and are subject to similar exceptions'.[3]
- **Winfield :**'Tortious liability arises from the breach of duty primarily fixed by law; this duty is towards persons generally and its breach is redressible by an action for unliquidated damages'.[1]

It would not be out of place to mention here that none of the above definition gives a wholesome information on torts which can be accepted in its totality. However, the definition given by Winfield has more substance compared to those of other authors and if we examine here some of its shortcomings then certainly we can try for a definition near to perfection by adding some more teeth to it.

Important points of Winfield definition are:

i. Duty primarily fixed by the law:

In tortious liability, the duty must be fixed by the law from the beginning and not by undergoing an agreement between the parties. So, parties can neither create nor negotiate the tortious liability by contract. Tort arises from the duty which has been fixed by the law and has been infringed by the party. From the above definition it is clear that liability arises from the breach of duty by a person but it has been seen that even though a person not committed a breach of duty himself, is held liable. Vicarious liability cases fall under the category where a master is held liable for his servant's wrong. In our country, it is the legal duty of every person who drives a vehicle to drive it carefully obeying traffic rules and guidelines. For example, A appoints B as his car driver and one day A asks B to fetch his relative from railway station to A's residence. In course of performing his duty B travels to station at

excessive speed and hits a pedestrian causing him grievous injury. Here B has committed a breach of duty primarily fixed by the law, but his master A will also be held liable in civil action under the rule of vicarious liability. This definition doesn't give space for such kind of cases to come within its ambit.

ii. Duty is towards persons generally

The duty in tort is always general and it is an important constituent of tort. In maximum cases, it is workable but in some cases, it becomes difficult to say who exactly are 'persons generally' hence it can be said that these words are ambiguous. In any case, this ambiguity of tortious liability serves to keep it distinct from the contractual liability, quasi-contractual liability and the liability arising from bailment where the duty is towards specific persons.

iii. Action for unliquidated damages.

Liquidated and unliquidated damages - where the plaintiff in an action sues for a pre-determined and inelastic sum of money it is a claim for liquidated damages. But if he sues for a sum which court, in its discretion, is at liberty to award, then he is said to have a claim for unliquidated damages even though he has mentioned a particular (fixed) sum of money in his pleadings.

LAW OF TORT

The theory was first put forward by *Sir Fredrick Pollock* in 1887. The theory was then supported and developed by *Prof. Percy Henry Winfield*.

According to him, “Law of Tort is a general liability which originates from the violation of duty determined by law.” This gives a wider approach to the theory of tort. According to this, all the wrongful acts that cause some kind of legal injury come under the law of tort. There must not be a pre-existing specified tort for a wrong to come under it. All the wrongful actions backed by legal justification fall under the scope of this theory and have room to seek remedy. A limited number of torts would not help in the society that is evolving every day. *Professor Winfield* was of the view that law of tort is an evolving concept, and a new tort may be identified and added to the theory. The theory has spaces for the newer torts to emerge. There is no limitation, and the new torts can be incorporated into the theory. As the extent of injuries is wide, the scope for remedy is also wider. This theory is also known as wider based theory or growing theory. The reason for the same is that it has a wider scope in the creation of new torts.

CASE LAWS

There are certain cases under which newer torts have been created.

- The tort of deceit under ***Pasley vs Freeman***: Pasley, the plaintiff, a merchant asked the defendant for a credit reference on Falch before selling him goods. The defendant was lying about the reference of Falch's credit and goods were shipped to Falch who never paid for them. The plaintiff then sued the defendant for fraud and misrepresentation. The action was maintainable on the grounds of deceit in "defendant and injury and loss to Plaintiff.
- The landmark decision of ***Rylands v. Fletcher*** establishes the principle of strict liability.
- The tort of inducement of breach of contract was developed in the case of ***Lumley v. Gye, 1853.***
- ***Mc Mehta v. The Union of India*** was a remarkable case in Indian legal history that established the principle of Absolute liability.
- In ***Ashby v. White***, the principle of Ubi jus ibi remedium was recognised for the first time.

IN FAVOUR: The coverage of Winfield's theory of tort is wider. A wider interpretation of the theory was made by the legal scholars as this had scope for establishing new principles of torts. The Indian judiciary supported Winfield's theory while the judgement of M.C. Mehta was delivered by *Justice P.N. Bhagwati*. Holt C.J., favoured the theory while giving recognition to the maxim ubi jus ibi remedium in Ashby v. White.

AGAINST: There are variations in the law of tort on case-to-case basis. There is a scope of misuse of this liberty given by the theory which allows newer torts to emerge just based on a legal justification. There is not much uniformity because of the evolving jurisprudence since there are no specified wrongs. Thus, though not much criticized, these are some of the drawbacks of Winfield's theory of law of tort.

LAW OF TORTS

Sir John William Salmond, on the other hand, proposed another theory with a narrower scope called the law of torts. According to the theory, the wrongful act must occur from a specific tort that is already been established under the law of torts. This has a much narrow coverage and is codified in nature. The theory of the law of torts is widely known as the

Pigeon-Hole Theory. Unlike the wide-scope theory, in this, there is no general principle of liability and the onus to prove the wrong is always upon the plaintiff to establish the wrongful act caused fits in one of the pigeon holes, i.e. some or the other specified tort. He noted that the remedy would be available only for those torts that fall well under the category of the certain specified torts and not for some other torts that may cause some legal injury but does not fit in the pigeon hole. Thus, Salmond was one of the scholars who were against the concept of generalization of torts.

CASE LAW

Donoghue v. Stevenson, in this case, a snail was found in the ginger beer opaque bottle. The plaintiff complaint against both the manufacturer and the seller of ginger beer. The injury was caused to the plaintiff, as it was unforeseeable from naked eyes inside the bottle. So, the manufacturer was held liable for the tort of negligence.

This gives rise to a new principle apart from the duty of care. Sir John Salmond was against such new evolutions of newer concepts. According to Salmond, a neat set of pigeon-hole, each containing a specific labelled tort, just as criminal law consists of a body of rules establishing specific offences, so the law of torts consists of a body of rules establishing specific injuries.

IN FAVOUR: The supporters believe that this does not restrict the power of courts in dealing with matters but forms the basis for the cases that come up. No new case can emerge unless it fits in the pigeon hole. Complete restriction is not the motive, but unless a wrongful act can fit as a tort that is already specified, there is no need for the new ones to emerge.

AGAINST: The limited scope of this theory of tortuous liability is high as it gives no remedy or the injuries that cause legal damage but does not fall under the category of specified wrong. Wrongs cannot be held wrongs just because they do not fall under any of the narrow boxes of the pigeon hole.

There are two widely accepted theories of tortuous liability, one given by Prof. Winfield i.e., a wide-based theory and the other by Sir John Salmon which is popularly known as the Pigeon-hole theory. Both of them have their pros and cons. One has a broader concept while the other is a narrower one. Winfield's theory opens a room for newer injuries and their remedies whereas, Salmond's theory restricts newer torts and demands wrongful acts to fit in the pigeon-holes i.e., the specified torts that already exist. This theory says that the plaintiff

can claim damages only for those actions that are already labelled. The Indian courts have evolved with the wider based Winfield's theory in landmark judgement such as M.C. Mehta v. The Union of India. Thus, this is a broader theory. The law of tort and law of torts both have an equal and important role in defining tortuous liability and are a part of the developing area of law.

13.Explain Nuisance with its essential characters and remedies available to it. What are its defences?

Introduction to Nuisance under Law of Torts-

The word Nuisance is derived from the French word 'Nuire' which means to infuriate or hurt. It is an unlawful interference with a person's use or enjoyment of land. This legal right cannot be taken away without lawful justification. Contrary to the given protection if someone unlawfully interferes with this entitlement of a person he/ she commits 'Nuisance' under Law of Torts. Generally, a person is entitled to the full and reasonable enjoyment and use of his property tangible, intangible, movable or immovable.

Jurist Salmond expresses *"The wrong of Nuisance consists in causing or allowing without lawful justification the escape of any deleterious thing from his land or from elsewhere into land in possession of the plaintiff, e.g. water, fumes, smoke, gas, noise, heat, vibration, electricity, disease, germs, animals."*

Essential Elements of Nuisance under Law of Torts

For making an act of Nuisance actionable under the law of torts the following essentials must be satisfied-

- Wrongful Act by the Defendant
- Damage/Loss/Inconvenience caused to the Plaintiff

Important Case Laws for Nuisance under Law of Torts

In the case of ***Ushaben v. Bhagyalaxmi Chitra Mandir***, where the Plaintiff prosecuted the Defendant against the screening of the movie "Jai Santoshi Maa", declaring that it undermines the religious sentiments of a particular Hindu community, the court dismissed the plea stating that undermining a religious emotion was not an actionable wrong and the

Plaintiff is free to not watch the movie again. Hence it was held that in order to claim damages for Nuisance, the interference shall be in a state of continuing wrong.

In ***Halsey v. Esso Petroleum Co. Ltd***, where the defendant's factory emitted smokes, oil, fumes and smell and polluted the environment along with harming the plaintiff's health because of his own sensitive health issue, the former were held liable to the latter only for the emission of smoke, oil and fume and not for health hazard.

Kinds of Nuisance under Law of Torts

Nuisance as a tort is further categorized into two types- Private Nuisance and Public Nuisance, both having their own areas of actions and types of damages.

Private Nuisance

Private Nuisance, influences an individual rather than the world at large. It provides the affected person a claim of "Right in Personam". Private Nuisance occurs when the action of the Defendant affects only the Plaintiff in his own enjoyment of land and property and no one else. Technically, when a person does an action which influences another person, and intercepts the latter from performing rights over his own property. It does not affect any other person.

The Plaintiff can claim for unliquidated damages and considering the seriousness of injury, the same are decided and awarded to him.

Essentials of Private Nuisance

- Unlawful or Unreasonable Interference.
- Such Interference causes a legal injury to the plaintiff only. The injury may be in respect of either Property or Physical Discomfort to the Plaintiff.

Case Laws

- In ***St. Hellen Smelting Co. v. Tipping*** where the fumes from the Defendant's Factory damaged the Trees of the Plaintiff, the court held that the damage to trees is an unlawful damage of the Latter's property and hence give rise to an action for Nuisance against the former.
- In ***Dilaware Ltd. v. Westminister City Council*** where the roots of the Defendant's trees caused cracks to the adjacent building, the Plaintiff i.e. the owner of the building

was made entitled to recover suitable damages from the defendant by the Virtue of tort of Nuisance.

- In ***Dattamal Chiranji Lal v. Lodh Prasad***, the defendants were awarded an injunction to stop the grinding mill which led to a non-peaceful life for the Plaintiff and his family.
- *In* ***Palmar v. Loder***, the Defendants were awarded a perpetual injunction against loud laughing, noise making and continuous ringing of the Plaintiff's Doorbell.

Public Nuisance

Public Nuisance is defined as an unreasonable and unlawful act of the defendant that causes substantial inconvenience and legal injury to the people at large. It comes into play when by the Act of the defendant, a mass of people is influenced negatively. In the words of Bermingham, Public Nuisance, where the defendant's actions "materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subject"

Public Nuisance, being a crime under the Indian as well as English Laws, finds its recognition in various statutes of the country. Thus, any action which seriously hinders with the health, safety, comfort and convenience of the public in general or which intend to demean morals come under public nuisance.

Examples :

(a) Fully or partially blocking a highway – ***New Group Newspapers v. SOGAT***.
(b) Picketing on a road – ***Thomas v National Union of Mineworkers***
(c) Blocking a canal – ***Rose v Miles***
(d) Making obscene telephone calls to large number of women – ***R v Johnson*** (Anthony Thomas)

Defences available under Nuisance

In an action for nuisance a number of defences have been pleaded. While some of the defences(Effectual defences) are held to be valid by the court's others(Ineffectual defences) have been rejected. Bo.th the defences have been discussed below.

Effectual defences

- **Prescriptive right to commit nuisance**

By prescription, a right to do an act which would otherwise be a nuisance, may be acquired. A person can acquire a legal right by prescription, if he has continued with an activity on the land of another person for 20 years or more, he acquires the prescriptive right to continue the work in future also. The period of nuisance cannot commence to run until the act complained of begins to be a nuisance [1]

CASE- In Sturges v. Birdman(1879), In this case the plaintiff, a physician had no problem with the defendant, a confectioner having a kitchen in the rear of his house adjacent to the house of the plaintiff . For over 20 years the sound from the kitchen didn't seem to be a problem for the plaintiff but when the plaintiff made a consulting room in his garden, for the first time, he felt the noise and vibrations from the kitchen which were a nuisance and they materially interfered with his practice. The court granted an injunction against the confectioner, as his claim for prescriptive right failed because the interference had not been an actionable nuisance for the preceding period of 20 years.

- **Statutory Authority**

An authority of statute has complete defence for the act done by it. If nuisance is necessarily incidental to what has been authorized by the statute, there is no liability for that under the law of torts. **For example**, a railway company authorized to run railway trains on a track is not liable, if in spite if due care, the sparks from the engine set fire to the adjoining property ***(Vaughan v. Taff Vail Rail Co. (1860)).***

Ineffectual defences for Nuisance

- **Nuisance due to act of others**

Sometimes, an act may cause nuisance, which is done by two or more persons acting independently of each other, although the act of any one of them alone would not be so.

For example, if there is nuisance by a hundred people leaving their wheelbarrows in a place and a single wheelbarrow by itself could not have caused nuisance, an action can be bought against those hundred persons and none of them can be allowed to take the defence that his act itself could not cause any damage to the complainant (***Thorpe v. Burmfit***, 1873).

- **Public good**

To say that what is a nuisance to a particular plaintiff is beneficial to the public, is no defence, or else no public utility undertaking could be held liable for the unlawful interference with the rights of individuals.

CASE- In Adams v. Ursell (1913), an injunction was issued preventing the continuance of a fried fish shop in the residential part of the street although, as alleged, the injunction would mean a great hardship to the defendant and his customers.

- **Reasonable care**

Use of reasonable care to prevent nuisance is generally no defense.

CASE- In Rapier v. London Tramways Co., considerable stench amounting to nuisance was caused from the defendants' stables constructed to accommodate 200 horses to draw their trams. The defense that maximum possible care was taken to prevent the nuisance failed and the defendants were held liable.

- **Plaintiff coming to nuisance**

To say that the plaintiff himself came to the place of nuisance is no defense.

CASE– In Bills v. Hall, in an action for nuisance for "Diverse noisome, noxious, and offensive vapour, fumes, smell, and strenches" out of defendant's tallow-chandlery, it was held to be no defense that the business had been continuing for three years before the plaintiff came to that place.

14.Define Negligence. Explain the essentials of Negligence with appropriate cases. What are its defences?

Introduction-

In our regular lives negligence highlights the meaning of carelessness, or the quality or state of being negligent but according to the legal sense negligence leads to the non-fulfilment of basic care which a performer should take as a reasonable man in all the situations.

Primary factors to consider in ascertaining whether the person's conduct lacks reasonable care are the foreseeable likelihood that the person's conduct will result in harm, the foreseeable severity of any harm that may ensue, and the burden of precautions to eliminate or reduce the risk of harm. Someone who suffers loss caused by another's negligence may be able to sue for damages to compensate for their harm. Such loss may include physical injury,

harm to property, psychiatric illness, or economic loss. The law on negligence may be assessed in general terms according to a five-part model which includes the assessment of duty, breach, actual cause, proximate cause, and damages.

For illustration , A store owner who fails to put up a "Caution: Wet Floor" sign after mopping up a spill.

Definition of Negligence under Law of Torts

According to *Winfield and Jolowicz* "Negligence is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff."

Lord Wright states that "Negligence means more than headless or careless conduct, whether in commission or omission; it properly connotes the complex concept of duty, breach, and damage thereby suffered by the person to whom the duty was owed."

According to *Charlesworth & Percy,* Negligence, in current forensic speech, negligence has three meanings. These are :

(i) A state of mind, in which it is opposed to intention;
(ii) Careless conduct;
(iii) The breach of duty to take care that is imposed by either common or statute law.

All three meanings are applicable in different circumstances but anyone of them does not necessarily exclude the other meanings.

In ***Blyth v. Birmingham WaterWorks Co***. (1856)ALDERSON, B. defined negligence as, negligence under Law of Torts is the omission to do something which a reasonable man would do, or doing something which a prudent or reasonable man would not do.

According to *Winfield* negligence as a tort is the breach of legal duty to take care which results in damage, undesired by the dependent to the plaintiff.

In ***Municipal Corporation of Delhi v. Subhagwanti***, a clock tower situated in the heart of the city, i.e., Chandni Chowk, Delhi collapsed causing the death of a number of persons.

The structure was 80 years old whereas its normal life was 40-45 years. The Municipal Corporation of Delhi, which was having control of the structure, had obviously failed to get the periodical check-up and the necessary repairs done. The defendant Corporation was,

therefore, held liable to pay compensation for the consequences of the collapse of the structure.

- **Foreign matter left inside after surgery**

In ***Nihal Kaur v. Director, P.G.IChandigarh,*** scissors were left in the body of a patient during operation. Then his condition worsened and he died. Scissors were recovered from the ashes after cremation. Compensation of Rs. 1,20,000 was awarded to the dependents of the deceased.

Negligence as a Tort

The term 'negligence' is used for the purpose of fastening the defendant with liability under the Civil Law and, at times, under the Criminal Law. Generally speaking, negligence is the amount of damages incurred which is determinative of the extent of liability in tort; but in criminal law it is not the amount of damages but the amount and degree of the negligence that is determinative of liability.

Torts are legal wrongs that one party suffers at the hands of another. Negligence is a form of tort which evolved because some types of loss or damage occur between parties that have no contract between them, and therefore there is nothing for one party to sue the other over.

The test required that

- Harm must be a reasonably foreseeable result of the defendant's conduct
- A relationship of proximity must exist
- It must be fair just and reasonable to impose liability

Elements of Negligence under Law of Torts

1. Duty of care to the plaintiff

It means a legal duty rather than a mere moral, religious or social duty. The plaintiff has to establish that the defendant owed to him a specific legal duty to take care, of which he has made a breach. There is no general rule of law defining such duty. It depends in each case whether a duty exists. In ***Donoghue v. Stevenson***, *Lords Atkin* said, "It is remarkable, how difficult it is to find in the English authorities statements of general application defining the relations between parties that give rise to the duty. The courts are concerned with the actual relations which come before them in actual litigation, and it is sufficient to say whether the duty exists in those circumstances.

The result is that the courts have been engaged upon an elaborate classification of duties as they exist in respect of property, whether real or personal, with further divisions as to ownership, occupation or control and distinctions based on the particular relations of the one side or the other, whether manufacturer, salesman or landlord, customer, tenant, stranger, and so on. In this way, it can be ascertained at any time whether the law recognizes a duty, but only where the case can be referred to some particular species which has been examined and classified."

2. Breach of duty

Breach of duty means non-observance of due care which is required in a particular situation. The standard is that of a reasonable man or of an ordinarily prudent man. If the defendant has acted like a reasonably prudent man, there is no negligence. As stated by Alderson B. **in B*lyth v. Birmingham Waterworks Co*.,**

"Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do." The law requires the caution which a prudent man would observe. "

Standard of care required

The law requires taking of two points into consideration to determine the standard of care required : (a) the importance of the object to be attained, (b) the magnitude of the risk, and (c) the amount of consideration for which services, etc. are offered.

(a) The importance of the object to be attained

The law does not require greatest possible care but the care required is that of a reasonable man under certain circumstances. The law permits taking chance of some measure of risks so that in public interest various kinds of activities should go on. "As has been pointed out, if all the trains in this country were restricted to a speed of five miles an hour, there would be fewer accidents, but our national life would be intolerably slowed down. The purpose to be served, if sufficiently important, justifies the assumption of the abnormal risk."

b) The magnitude of risk

The degree of care required varies according to each situation. What may be a careful act in one situation may be a negligent act in another. The law does not demand the same amount of

care under all situations. The kind of risk involved determines the precautions which the defendant is expected to take. The position in this regard was explained by *Venkataramiah, J.* in ***Mysore State Road Transport Corporation v. Albert Disa*** **as under,**

Negligence is failure in the duty to take due care. The expression 'due' connotes that degree of care which a reasonable man ought to take in a given set of circumstances. What may amount to 'negligent' act in a particular place and occasion may not be a negligent act in another place or occasion. In deciding what care was called for by a particular situation, one useful test is to enquire how obvious the risk must have been to an ordinary prudent man.

(c) The amount of consideration for which services, etc. are offered

The degree of care depends also on the kind of services offered by the defendant and the consideration charged therefor from the plaintiff. For instance, one who purchases a glass of water from a trolley in the street for 10 or 25 paise is entitled to safe drinking water which should not ordinarily infect him. But if a person purchases a mineral water bottle for Rs. 10/- or 15/-, then he can justifiably demand a higher degree of purity.

3. Damage

It is also necessary that the defendant's breach of duty must cause damage to the plaintiff. The plaintiff has also to show that the damage thus caused is not too remote a consequence of the defendant's negligence.

Rebuttal of the presumption of negligence

The rule of res ipsa loquitur only shifts the burden of proof and instead of the plaintiff proving negligence on the part of the defendant, the defendant is required to disprove it. If the defendant is able to prove that what apparently seems to be negligence was due to some factors beyond his control, he can escape liability.

Res ipsa Loquitur

The Latin term *Res Ipsa Loquitur* means "the thing speaks for itself". which means the situation of a particular act is enough to get the idea what has happened. It is the principle that the mere occurrence of some types of accident is sufficient to imply negligence.

Remedies for negligence under Law of Torts

The principal remedy in any case involving negligence will be an award of damages. The damage caused to the claimant must be of a type that is 'reasonably foreseeable'. A loss is reasonably foreseeable if a reasonable man would have foreseen the type of injury, loss or damage. Proving the duty of care as a general rule it is for the claimant to prove that the defendant was in breach of the duty of care. Exceptionally the defendant will have to prove that he was not negligent. This will only occur if:

- the harm would not have normally happened if proper care were taken
- there is no other explanation for what has occurred, known as res ipsa loquitur, the thing that speaks for itself
- the defendant was in control of the situation and the victim was not.

Remoteness of Damage

Overseas Tank-ship (UK) v Morts Dock and Engineering Co (The Wagon Mound) (1961)

Facts: due to the defendant's negligence oil was spilled and accumulated around the claimant's wharf. The oil ignited and the wharf suffered fire damage.

Held: The defendants were held not liable for negligence under Law of Torts since, while damage to the wharf by oil pollution was foreseeable, damage by fire was not.

If the type of damage is reasonably foreseeable the defendant is liable. It is irrelevant that the defendant might not have been able to foresee its cause or its severity.

Defences against negligence under Law of Torts

In an action for negligence under Law of Torts following defences are available: –

1. **Contributory negligence:**

   When a tort or a wrongful action is committed by negligence on the part of both , the plaintiffs and defendants, the defendants can raise the plea of contributory negligence under Law of Torts. It was the Common law rule that anyone who by his own negligence contributed to the injury of which he complains cannot maintain an action against another in respect of it. Because, he will be considered in law to be author of his wrong.

   Butterfield v. Forrester, (1809) 11 East 60: The defendant had put a pole across a public thoroughfare in Durby, which he had no right to do. The plaintiff was riding that way at

8'O clock in the evening in August, when dusk was coming on, but the obstruction was still visible from a distance of 100 yards, he was riding violently, came against the pole and fell with the horse. It was held that the plaintiff could not claim damages as he was also negligent.

2. **Act of God or vis major:**

Act of God refers to some natural calamity such as heavy rainfall , storms ,earthquakes and volcanoes. Two conditions are essential for this defence:

- There must be working of natural forces.
- The occurrence must be extraordinary and not the one which could have been anticipated.

It is such a direct, violent, sudden and irresistible act of nature as could not, by any amount of human foresight have been foreseen or if foreseen, could not by any amount of human care and skill, have been resisted. Such as, storm, extraordinary fall of rain, extraordinary high tide, earth quake, etc.

In Nichols v. Marsland, (1875) LR 10 Ex.255: The defendant had a series of artificial lakes on his land in the construction or maintenance of which there had been no negligence. Owing to an exceptional heavy rain, some of the reservoirs burst and carried away four country bridges. It was held that, the defendant was not liable as the water escaped by the act of God.

3. **Inevitable accident:**

If the plaintiff has an unexpected injury owing to an unforeseen and Inevitable event, in spite of reasonable care on the part of the defendant, it is called inevitable accident. The defendant has to prove that he neither intended to injure the plaintiff nor had the means to avoid the injury by taking reasonable care. An inevitable accident is that which could not possibly, be prevented by the exercise of ordinary care, caution and skill. it means accident physically unavoidable.

In Brown v. Kendal, (1859) 6 Cussing 292: The plaintiff's and defendant's dogs were fighting, while the defendant was trying to separate them, he accidentally hit the plaintiff in his eye who was standing nearby. The injury to the plaintiff was held to be result of inevitable accident and the defendant was not liable.

In Holmes v. Mather, (1875) LR 10 Ex.261, 267: a pair of horses were being driven by the groom of the defendant on a public highway. On account of barking of a dog, the

horses started running very fast. The groom made best possible efforts to control them but failed. The horses knocked down the plaintiff who was seriously injured, it was held to be an inevitable accident and the defendant was not liable.

In *Stanley v. Powell*, *(1891) 1 QB 86:* The plaintiff and the defendant, who were members of a shooting party, went for pheasant shooting. The defendant fired at a pheasant, but the shot from his gun glanced off an oak tree and injured the plaintiff. It was held that the accident was an inevitable accident and the defendant was innocent.

15.Discuss doctrine of Absolute Liability with decided cases.

Introduction

The principle of absolute liability was evolved in India in the case of ***M.C Mehta v. Union of India*** popularly known as Oleum gas leak case. This is one of the landmark judgements of the Indian Judiciary. We have always followed the British rules and regulations even after Independence. Before the evolution of this doctrine, India is been following the strict liability doctrine. But the problem with that doctrine was it has so many exceptions that the guilty one always uses one of the exceptions and was done away with the crime committed.

After the Bhopal leakage case, many people have lost their lives, there was havoc in the city of Bhopal after the gas leak as many people have lost their lives and in many people were affected with the fatal diseases that lasted through the generations. So, the Court decided to depart from the strict liability principle and develop a new principle that is an absolute liability (strict liability – exceptions). This rule was laid down by the Supreme Court which is so much wider with respect to the rules that was laid down by the House of Lords in the case of ***Ryland v. Fetcher*** (When a defendant is guilty he is not allowed to plead any defence, it is a strict liability with no exception).

Concept of Absolute Liability

Definition: If an industry or enterprise is engaged in some inherently dangerous activity from which it is deriving commercial gain and that activity is capable of causing catastrophic damage then the industry officials are liable to pay compensation to the aggrieved parties**.**

Essential Elements of Absolute Liability-

1. **Dangerous Thing-**

The liability will only arise if there is any dangerous thing that has been escaped from the owner's land. And the thing is likely to cause damage and can injure any person or person's property on its escape. In various cases of strict liability, the following things have been held dangerous that is- a large pool of water, electricity, gas, explosives, fumes, rusty wires etc.

2. **Escape–**

Any dangerous thing which is escaped from the defendant's control and caused damaged to the plaintiff's property or injured any person will come under the ambit of absolute liability. In the case of ***Read vs Lyons and Co***.- In this case, the plaintiff was an employee in the defendant's manufacturing company. While doing her duty a piece of manufactured exploded and she suffered severe harm. Here the court held- that the plaintiff was doing her duty and the accident occurred within the premises and course of employment. It was held the defendant cannot escape from his liability and the strict liability principle is not applicable in this case. The defendant was held liable.

3. **Non-Natural use of land–**

If water is collected only for domestic use then it is not called as non-natural use but if it is collected in large quantity like in a reservoir then it is termed as non-natural use of land. In the case of ***Ryland v. Fletcher,*** it was held that collecting water in the large quantity amounts to non-natural use of land. The basic line which is drawn between a natural or non-natural use of land is to keep in mind the surrounding and social conditions and will a reasonable person would do? When a person is growing tree in her land that is the natural use of land but when he/she starts growing poisonous tree then it is termed as non-natural use of land.

4. **Mischief-**

To make the person liable under this principle, the plaintiff at first needs to show that the defendant had done the non-natural use of land and escaped the dangerous thing which he has on his land which resulted in the injury further.

In the case of ***Charing Cross Electric Supply Co. vs Hydraulic Power Co***.- The defendant was assigned to supply water at different places. The defendant was also required to hold minimum pressure but the defendant failed to do so which results in the bursting of the

pipeline at different places. It caused heavy damages to the plaintiff. The defendant was held liable in this case even was not at fault.

Scope of Rule of Absolute Liability

In almost all the cases the rule of absolute liability is considered as an exception of the law. After the catastrophic accident of Oleum gas leak tragedy, the act of The Public Liability Insurance Act, 1991 was introduced. Its objective was to compensate the victims of the case where the hazardous substances or handling of the dangerous substance is involved. The main motto behind the act was to create public liability insurance fund which will eventually be used to compensate the victims.

16.Define Trespass to land. Discuss defences of Trespass to land.

Introduction

A tort is a wrongful civil action that can lead to harm, such as personal injury or personal property damage. Tort law has developed in part from common law, which is the body of rules created by judges over time. Separately, states have penal codes that allow prosecutors to bring government charges for criminal trespass. This article only focuses on the civil (private) tort claim for trespass.

The tort of trespass to land occurs when a person intentionally enters another's property without permission. The only intent required for this claim is the intent to enter the property. So even if your neighbours accidentally cross from their property into your lot, they can be liable for trespass. A trespass can also occur if someone causes a physical item, like a golf ball, to enter your property. Substantial injury is not required.

Proving Trespass to Land Claim

In order to prove that a defendant is liable for trespass to land, you'll typically have to show that four distinct actions occurred:

- **Entry:** The defendant must intend to enter the land that is the subject of the trespass. It's not required that the defendant intended to do so wrongfully. Thus, entering land by mistake can be a trespass in some states. Causing an object or thing to enter someone's property can also be considered trespass.

- **Property of another:** A trespass claim must be brought by a person with a legal interest in the property. It may be an owner or a third person such as a tenant.
- **Without owner's consent:** Entry onto the property must be unauthorized, either expressly or implicitly. For example, an “Entry Forbidden" sign expressly prohibits entrance. In the case of a “Private Property" sign, it is implied that a reasonable person would not enter the private property of a homeowner. They would have no such legal right. On the other hand, police and postal carriers have implied consent to be on most residential property, so a trespass cause of action (claim) would fail in such cases. Similarly, an owner of an easement may have a legal right of way to enter a property.
- **Damages:** In most states, to establish a viable claim, some damage must be suffered. This could be anything from the plaintiff's injuries to damage to their land. The defendant doesn't need to intend to cause the harm, but the defendant's actions must be a substantial factor in the causation of the harm suffered.

The physical act of intrusion onto land, even without significant damages or harm, is typically enough to support a trespass claim. In some states, such as California, annoyance and discomfort are enough to establish trespass to land.

Damages Available-

A property owner or tenant has a right to compensation for the injury caused by the trespass. Depending on the nature of the trespass, you as the injured party may be able to recover for the following damages:

- Loss of market value
- Costs of restoration
- Loss of use of the property
- Physical injury to the person or to the land
- Damage to your personal property (see also trespass to chattels)
- Emotional distress (see also intentional infliction of emotional distress)
- Discomfort and annoyance (see also invasion of privacy)

When permanent injury to real property occurs, the general measure of damages is the loss of fair market value. In cases of temporary injury, the cost to repair or restore is the common basis for an award. But when the cost to repair or restore exceeds the decrease in market value to such a degree that repairs are no longer economically feasible, damages are awarded only for the loss of market value.

In cases where a defendant's actions are particularly egregious, punitive damages may also be available. These are damages intended to punish the defendant in excess of the financial harm suffered by the plaintiff. A court is more likely to award punitive damages when a plaintiff can show that a defendant knew harm could result from their trespass.

Getting an Injunction

Maybe you don't need compensation for damages. You just want the trespass to stop. An injunction is an order by a court instructing someone to stop doing something.

An injunction is often the best way to stop repeated trespassing. Many state courts have forms to help you draft your request. Talk to the clerk of the court or an attorney to understand your filing requirements. After an injunction is issued, the court will order the trespass to stop. If the offending conduct continues, you can file for contempt of court.

Liability for Injury to Trespassers

Generally, a property owner or a tenant is not responsible for a trespasser's injuries. But this does not mean the property owner owes no duty of care to a trespasser. The following sections describe situations in which a trespasser can be liable for damages suffered by someone not rightfully on your property. When dangerous conditions exist on a property, the owner may have premises liability under personal injury law.

Discovered or Known Trespassers

When a landowner or tenant discovers or anticipates trespassers, they may owe a duty of care to them. The owner must take ordinary care to warn or make safe concealed, unsafe, artificial conditions involving risk of death or serious bodily harm. You don't need to see the people who trespass to know of their presence. A path worn in the earth or trash left behind in a building is enough to make trespassers discovered.

17.Write a note on doctrine of Common Employment.

The Doctrine of Common Employment (As an Exception to The Rule of Vicarious Liability)-

The doctrine of common employment was introduced in the English law probably as a defence to the principle of vicarious liability. This doctrine stated that an employer/master cannot be held liable for the injuries of his/her servant caused by the negligence of a fellow servant. This doctrine was first used in the case of ***Priestley vs. Fowler, 1837*** where a butcher boy sued his master due to the injury caused to him by the collapse of his master's van. The master was not held liable as the injury was caused to him due to the negligent overloading of his fellow servant.

The chief reason behind this judgment was to limit the liability of a master for the actions of his servants only during the course of their employment. At that time, it was considered to be fair, but later the use of this doctrine was extended to any injury received by the servant for any ordinary risk of service. This became the reason for its criticism. The defence made in favour of the doctrine was that the servant on his/her own will have entered into the company and has all the knowledge of the potential risk.

Various laws came into place in England trying to abolish the doctrine of common employment as it was considered to be against the safety and betterment of the employees. These laws could not completely abolish it but definitely narrowed down the range of the doctrine. Along with the laws there were a lot of judicial decisions taken by the House of Lords (upper house of the parliament in England) to restrict the use of the doctrine. In the case of ***Wilsons & Clyde Coal Co. vs. English*** it was held that the employer is bound to take reasonable care for the safety of the servant by providing-

- A competent staff of men
- A proper and safe plant and appliances to work
- A proper system for conducting his work and efficient supervision of it

Finally, after working on lot of permutations and combinations the defence of common employment was abolished by the Law Reform (Personal Injuries) Act, 1948.

Vicarious Liability in India

As British ruled India over centuries, it was very much obvious that the doctrine of common employment was applicable in India but for a short span of time. A lot of cases were studied

and it was indicated that the application of this doctrine in India was doubtful. The last case where the doctrine was used was the ***Brookle Bank Ltd vs. Noor Ahmode, 1940.*** Simultaneously, the Indian Legislature passed The Employer's Liability Act, 1938 with the objective of ruling out certain defences arising out of injuries sustained by workmen.

The tortious liability of employers not covered under any other enactment is covered under this act. There were a lot of issues regarding the ambiguities in the act but were later resolved by various amendments. So, both the legislations in England and India restricted the use of the doctrine of common employment to a large extent.

In conclusion it can be said that the decision regarding the application of vicarious liability can be better taken by the courts than the parliament. Though it is said in some statutes that a person can be made liable for the other person's wrongful act, it is better for the courts to decide the intension of the act. As the concept of vicarious liability is taking place in the criminal law as well, the cases pertaining to it must be solved with complete rationality and on the basis of strong evidence.

Also, though the principle is not explicitly specified in any statute, but is well settled through various case laws. It seems rather odd for courts to make a person liable for the acts of others and it seems right that a person should be made liable for his personal acts only. But sometimes it is necessary to make both the principal and subordinate (in this case master and servant) liable for the wrongful act to protect the interest of both the parties i.e. the injured and the offender.

THE CONSUMER PROTECTION ACT, 1986

1. Explain the composition and jurisdiction of the National Commission under the Consumer Protection Act, 1986.

According to section 2 (1) (k) of the Act, the 'National Commission' means the National Consumer Dispute Redressal Commission established under clause (c) of Section 9.

Section 9 (c) provides that there shall be established for the purpose of this Act a National Consumer Disputes Redressal Commission established by the Central Government by notification. The Government vide powers conferred upon it under the said clause established a National Commission in 1987.

Chapter III of the Consumer Protection Act, 1986, deals with the establishment of the three tier consumer disputes redressal agencies, their compositions and jurisdiction.

Thus ,the **Composition of the National Commission is laid down in section 20.**

The National Commission shall consist of the following :

(1) Its President—who is or has been a judge of the Supreme Court. He shall be appointed by the Central Government. His appointment shall not be made except after consultation with the Chief Justice of India.

(2) Not less than four, and not more than such number of members, as may be prescribed, one of them shall be a woman.

The qualifications of the abovesaid members are:

(i) They should not have less than 35 years of age;

(ii) They should possess a bachelor's degree from a recognized university; and

(iii) They should be persons of ability, integrity and standing, and have adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration : Provided that not more than 50% of the members shall be from amongst the persons having judicial background.

Disqualifications of members

A person shall be disqualified from appointment, if he:—

(a) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has, in the opinion of the Central Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has such other disqualifications as may be prescribed by the Central Government : Provided that every appointment under this clause shall be made by the Central Government on the recommendation of a Selection Committee consisting of the following, namely :—

i. A person who is a judge of the Supreme Court, to be nominated by the Chief Justice of India (Chairman),
ii. The Secretary in the Department of Legal Affairs in the Government of India (Member),
iii. Secretary of the Department dealing with consumer affairs in the Government of India (Member).

TENURE :

According to the sub clause (3) of section 20, every member of the national commission shall hold office for a term of five years or upto the age of seventy years, whichever is earlier. They are not eligible for re appointment.

Jurisdiction of the National Commission

According to the section 21 of the act, the jurisdiction of the national commission shall be as under:

i. It can entertain complaints where the value of the goods or services and compensation, if any, claimed exceed Rs. one crore;
ii. It can entertain appeals against the orders of any State Commission; and
iii. It can call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission, where it appears to the National Commission that such State Commission has exercised jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

It may be noted that now after the Amendment Act, 2002, the pecuniary jurisdiction is only in respect of complaints where the amount in dispute exceeds Rs. one crore. Earlier it was above Rs. 20 lakhs.

2. What do you mean by complaint? Who can be a complainant under the Consumer Protection Act,1986?

An aggrieved consumer seeks redressal under the Act through the instrumentality of complaint. It does not mean that the consumer can complain against his each and every problem. The Act has provided certain grounds on which complaint can be made. Similarly, relief against these complaints can be granted within the set pattern.

What constitutes a complaint is defined under [Section 2(1)(c)] –

Complaint is a statement made in writing to the National Commission, the State Commission or the District Forum by a person competent to file it, containing the allegations in detail, and with a view to obtain relief provided under the Act.

Thus, according to the consumer protection act, a Complaint means any allegation in writing made by a complainant that is:

1. An unfair trade practice or a restricted trade practice has been adopted by any trader.
2. The goods bought by him or agreed to be bought by him suffer from one more defect.
3. The services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect.
4. A trader has charged for the goods mentioned in the complaint a price excess. of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods.
5. Goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force, requiring traders to display information in regard to the contents, manner and effect of use of such goods; with a view to obtaining any relief provided by law under the CPA.

Who can file a complaint [Sections 2(b) & 12] –

At the outset it is clear that a person who can be termed as a Consumer under the Act can make a complaint. 'Complainant' is a person who lodges a complaint.

To be specific on this account, following are the persons who can file a complaint under the Act :

(a) a consumer; or
(b) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force, or
(c) the Central Government or any State Government,

(d) one or more consumers, where there are numerous consumers having the same interest.

In addition to the above following are also considered as a consumer and hence they may file a complaint :

- **Beneficiary of the goods/services** : The definition of consumer itself includes beneficiary of goods and services - ***K.B. Jayalaxmi v. Government of Tamil Nadu 1994(1) CPR 114.***

Where a young child is taken to the hospital by his parents and the child is treated by the doctor, the parents of such a minor child can file a complaint under the Act - ***Spring Meadows Hospital v. Harjot Ahluwalia JT 1998(2) SC 620.***

- **Legal representative of the deceased consumer** : The Act does not expressly indicate that the LR of a consumer are also included in its scope. But by operation of law, the legal representatives get clothed with the rights, status and personality of the deceased. Thus, the expression consumer would include legal representative of the deceased consumer and he can exercise his right for the purpose of enforcing the cause of action which has devolved on him - ***Cosmopolitan Hospital v. Smt. Vasantha P. Nair (1) 1992 CPJ NC 302.***
- **Legal heirs of the deceased consumer** : A legal heir of the deceased consumer can well maintain a complaint under the Act - ***Joseph Alias Animon v. Dr. Elizabeth Zachariah (1) 1997 CPJ 96.***
- **Husband of the consumer** : In the Indian conditions, women may be illiterate, educated women may be unaware of their legal rights, thus a husband can file and prosecute complaint under the Consumer Protection Act on behalf of his spouse - ***Punjab National Bank, Bombay v. K.B. Shetty 1991 (2) CPR 633.***
- **A relative of consumer** : When a consumer signs the original complaint, it can be initiated by his/her relative – ***Motibai Dalvi Hospital v. M.I. Govilkar 1992 (1) CPR 408.***
- **Insurance company** : Where Insurance company pays and settles the claim of the insured and the insured person transfers his rights in the insured goods to the company, it can file a complaint for the loss caused to the insured goods by negligence of goods/ service providers. For example, when loss is caused to such goods because of negligence of transport company, the insurance company can file a claim against the transport company - ***New India Assurance Company Ltd. v. Green Transport Co. II 1991 CPJ (1) Delhi.***

Section 24A of the Act provides that a consumer dispute can be filed within two years from the date on which the cause of action arises. Since this provision was inserted in the Act in 1993, before that the Consumer Forums were following the Limitation Act, 1963, which says that a suit can be filed within three years after the cause of action arises. The point of time when cause of action arises is an important factor in determining the time period available to file a complaint. There are no set rules to decide such time. It depends on the facts and circumstances of each case.

3. Who is a consumer?

The expression ‘consumer’ in the common sense, means ‘all of us may be called consumers, when we purchase some movable or immovable property or hire services for various purposes.’ It is defined in S. 2(1)(d) of the consumer protection Act,1986 . The primary purpose of the definition is to restrict the availability of consumer remedies only. The method adopted is to confine the Act to non-business buyers from business sellers.

According to Section 2(d), 'Consumer' means any person who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payments, when such services are availed of with the approval of the first-mentioned person;

[**Explanation:** For the purposes of sub-clause (i), “commercial purpose” does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;]

The definition of the term 'consumer' given in clause (d) of section 2(1) of the Act is comprehensive one so as to cover not only consumer of goods but also consumer of services.

The definition is wide enough to include in consumer not only the person who buys any goods for consideration but also any user of such goods with the approval of the buyer. Similarly, it covers any person who hires or avails of any services for consideration and also includes any beneficiary of such services, when availed with the approval of the hirer.

Thus, any user of goods or any beneficiary of services. other than the actual buyer or hirer, is a consumer for the purpose of this Act and he is competent to make a complaint before the Consumer Redressal Forum under this Act. The Act aims to protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of service. The important characteristic of goods and services under the Act is that such goods are supplied at a price to cover the costs which consequently result in profit or income to the seller of goods or provider of services. It includes anyone who consumes goods or services at the end of the chain of production.

The Supreme Court in its decision in ***Lucknow Development Authority v. M. K. Gupta*** noted that the word 'consumer' is comprehensive expression. It extends from a person who buys any commodity either as eatable or otherwise from a shop, business house, corporation, store, fair-price shop to use it for private use or consumption and not for a commercial purpose. The term 'consumer' also includes any person who uses the goods with the permission of the buyer though he is not himself buyer.

4. Explain in details the composition, appointment and jurisdiction of State Commission.

COMPOSITION OF THE STATE COMMISSION (SECTION 16)

Each State Commission shall consist of:

(a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President: Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;

(b) not less than two, and not more than such number of members, as may be prescribed, and one of who shall be a woman, who shall have the following qualifications, namely:-

- (i) be not less than thirty-five years of age;
- (ii) possess a bachelor's degree from a recognized university; and
- (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to

economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent of the members shall be from amongst persons having a judicial background.

Every appointment under Sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following members, namely:-

i. President of the State Commission -Chairman.
ii. Secretary of the Law Department of the State -Member.
iii. Secretary, in charge of Department dealing with consumer affairs in the State Member.

Provided that where the resident of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the State Commission shall be such as may be prescribed by the State Government. Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier: Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-seven years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions.

Jurisdiction of the State Commission (Section 17)

Subject to the other provisions of this Act, the State Commission shall have jurisdiction-

(a) To entertain- (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees exceeds rupees 20 lakhs but does not exceed one crore ; and (ii) appeals against the orders of any District Forum within the State; and
(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not

vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

A complaint shall be instituted in a State Commission within the limits of whose jurisdiction–

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.) In Kashyap Constructions (Pvt.) Ltd.v. Delhi Development Authority, it was held that the State Consumer Disputes Redressal Commission has no jurisdiction to entertain complaints regarding the transactions of shops/kiosks having been purchased in auction from the Delhi Development Authority

5. Discuss the jurisdiction and composition of District Consumer Forum.

Composition of the District Forum (Section 10)

Each District Forum shall consist of the following:

(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely :-

(i) be not less than thirty-five years of age,

(ii) possess a bachelor's degree from a recognized university,

(iii) be persons of ability, integrity and standing, and have adequate problems relating to economics, law, commerce, accountancy, industry public affairs or administration:

Provided that a person shall be disqualified for appointment as a member, if he-

(a) Has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or

(b) Is an undischarged insolvent; or

(c) Is of unsound mind and stands so declared by a competent court; or

(d) Has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) Has, Stuffs in the opinion of the state Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) Has such other disqualifications as may be prescribed by the State Government.

Method of Appointment

Every appointment under sub-section (I) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:-

(i) the President of the State Commission- Chairman.

(ii) Secretary, Law Department of the State - Member.

(iii) Secretary, in charge of the Department - Member dealing with consumer affairs in the State

Provided that where the President of the state Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

Terms of Office and Salary

Every member of the District Forum shall hold office for a term of five years or up to the age of 65 years, whichever is earlier. Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment and such re-appointment is also made on the basis of the recommendation of the Selection Committee.

Provided also that a person appointed as the President or as a member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term. The salary or honorarium and other allowances payable to, and the other terms and conditions of

service of the members of the District Forum shall be such as may be prescribed by the State Government.

Jurisdiction of the District Forum (Section 11)

Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees 20 lakhs.

A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,-

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

In ***Kurukshetra University v. Vinay Prakash Verma***, it was held that objection & regarding territorial jurisdiction should be taken at the earliest opportunity or the same deemed to have been waived. Further in ***Consumer Education and Research Society v. Canara Bank***, it has been held a petition of complaint can be filed against corporation carrying on business within the territory of District Forum or Commission even though its sole or principal office is situated outside state limits.

6. What are the objectives of the enactment of the Act?

The Consumer Protection Act was passed in 1986 and it came into force on 1st July 1987. The main objectives of the act are to provide better and one spherical protection to customers and effective safeguard against different types of exploitation like defective merchandise, deficient services and unfair trade practices. It conjointly makes provisions for simple, speedy and cheap machinery for redressal of consumer's grievances.

With the speedy growth in trade and commerce, the traders had an unfair favourable position over the customers and this was an instantaneous consequence of industrialization. The consumer had very little or no information regarding the rights available to them and thus were pushed to a disadvantage. But, it had been solely in 1986 that the law makers of the nation decided to structure and contour the efforts created towards protecting consumers' interest and stressed the necessity of welfare legislation in the form of the Consumer Protection Act, 1986.

According to the preamble of the Act, the Act was enacted, to provide protection of the interest of consumers. The use of the word 'protection' furnishes the key to the minds of the makers of the act . Various definitions and provisions which elaborately tend to achieve this objective have to be construed in this light without departing from the settled review that a preamble cannot control the otherwise plain meaning of a provision.

The act meets the long-felt necessity of protecting the common man from such wrong for which remedy under ordinary law for various reasons has become illusory. The importance of the act lies in promoting the welfare of society by enabling the customer to participate directly in the market economy. It attempts to remove the helplessness of the consumer which he faces against powerful business described as a network of rackets or a society in which producers have secured power, to 'rob the rest of the public bodies.

The legislature has been taken precautions define **complaint**, **complainant** and **consumer** but even to mention in detail what would amount to unfair trade practices by giving an elaborate definition in the clause (r) and even to define defect and **deficiency** by clauses (f) and (g) for which consumer can approach the Commission.

The Act thus aims to protect the economic interest of the consumer as understood in a commercial sense as a purchaser of good and in the larger sense of services . It is a milestone in the history of socio-economic legislation and directed towards achieving public benefit. The act has to be constructed in favour of the consumer to achieve the purpose of the enactment as it is social benefit-oriented legislation.

Subject to that, it should not do violence to the language of the provision and should not be contrary to the attempted objective of the enactment .For the settlement of consumer disputes and other connected matters, the Act has made provisions for the establishment of consumer councils. At the district, state and central level quasi-judicial machinery has been set up which will observe the principles of natural justice and provide speedy and simple redressal

to consumer disputes. Every customer has certain rights and responsibility which this Act seeks to protect. For example, every consumer has the right to informed to be informed about the quality, quantity, potency, purity standards and rise of goods, the right to be protected against marketing of goods that are hazardous to life and property, right to access to a variety of goods at a competitive price, right to consumer education, right to be heard and to be assured that consumers interest will receive due consideration at appropriate forum and finally the right to seek redressal against unfair trade practices and unscrupulous exploitations of consumers.

The Supreme Court has held that the purpose of the Consumer Protection Act is the better protection of interests of consumers and to make provisions for the settlement of consumer council and other authority for the settlement of consumer disputes and matter connected therewith.

The objects of the act are given in section 6 which makes it the responsibility of the Centre Consumer Protection Council for achieving those objects .

Section 6 says that

The objects of the Centre Council shall be to promote and protect the right of the consumers such as:

a. The right to be protected against the marketing of goods [and services] which are hazardous to life and property;

b. The right to be informed about the quality quantity potency, purity in standard and price of goods[or service as the case may be] so as to protect the consumer against unfair trade practices;

c. The right to be assured wherever possible access to a variety of goods and services are at a competitive price;

d. The right to be heard and to be assured that the consumer's interest bill received new consideration at appropriate forums;

e. The right to seek redress and against unfair trade practices[or restrictive trade practices] or unscrupulous exploitation of consumers; and

f. The right to consumer education.

1. **Right to Protection against Hazardous Goods:**

The Act gives every customer the right to be protected against hazardous goods and service which are dangerous to life and property. Hazardous goods include for example adulterated foods, narcotic drugs; weak cement etc all these being dangerous to life as well as property. Even though government authority has several laws at their disposal for the prevention of marketing of hazardous goods and services yet any consumer who has been injured either in his person or property may come for protection and he will have a speedy and effective remedy for redressal.

The Law of Torts generally deals with the subject matter of dangerous goods. The leading case relating to dangerous goods is that of **Donoghue v. Stevenson** [43]in which it was held that a producer sending goods into the market would be liable to the ultimate consumer if his person or property is injured by the normal use of the goods. In this celebrated case a manufacturer who sold a substandard article to a retailer who sold it to a consumer was held liable to a friend of the consumer who after consuming it became ill, in fact, her illness was aggravated when remains of a dead snail which sprang from a bottle of drink her had already taken. This landmark decision expanded the category of a person's liability. From the producer to the ultimate consumer every person in the chain has been made liable. In another leading case of **Grant v. Australian Knitting Mills**[44] liability was attached to the weavers of trousers which contain some chemical because of which the person who wore those trousers had the problem of dermatitis (skin disease).

In the words of Winfield: The principle has been extended from articles of food and drinks and includes inter alia kiosks , tombstone, hair dye , industrial chemicals , lifts, motor-cars and parts, toys and scented erasers. Likewise, the term 'consumer' includes the ultimate user of the article or anyone who is within the physical proximity of it.

To all cases, whether it includes injuries to a child by a falling tombstone or delivery of defected cars or liability to a person who was stranded in a lift, this principle applies.

2. **Right to information:**

Every consumer has the right to be informed about the quality, quantity, potency, purity, standard and price of goods or service, as the case may be, he buys or avails of. Right of

[43] [1932] AC 562
[44] [1936] AC 85

information has been given to the customers to protect them from unfair trade practices. The term unfair trade practice has been described in Section 2 (1) (r). Unfair trade practices include a false representation that goods or services are of particular standard, quality, grade etc.; any false warranty or guarantee of performance of the goods or services; publication of advertisement for sale or supply of goods or service at a bargain price that is not intended to be offered for sale or supply at the bargain price; offering of gifts, prizes or other items with the intention of not providing them as offered or creating an impression that something is being offered free of charge when it is not so in reality.

The case of **Consumer Protection Council v. National Dairy Development Board** can be usefully cited here. In this case, the complainant wanted to know that how the dairy board was using the imported palmolein oil but the Board was not furnishing the requisite information because according to it the figures were privileged from disclosure in the public interest. It was held that the complainant had the right to information.

In **India photographic Co v. HD Shourie** , an importer of films was not able to print prices on films because the nature of his trade did not permit him to open packages. Therefore, he was directed to make a condition of attaching price tags to each item before selling them to his retailers. Similarly, when Rs.88/- was charged for an article which showed the price Rs.75 inclusive of taxes the buyer was given compensation for Rs.500/-. In cases of unfair trade practices, the consumer may apply either the Monopolies Commission under the MRTP act or to the Forum constituted under the Consumer Protection Act, 1986.

3. **Right of Access to Variety of Goods and Services at Competitive Prices:**

Every consumer has a right to access variety of goods and services at competitive prices. This can be done only when there is an organization of market and fixation of market prices in such a way that all dealers are supplied with variety of goods for benefit of the consumer and the goods are being offered at competitive prices. This responsibility of bringing organization of market and market prices has been cast upon the Central Consumer Protection Council by the Act. Certain liberty has been given to the shopkeepers in respect of marketing so that goods and services of variety may become available at competitive prices. When a matter is brought to the notice of the Monopolies Commission that a shopkeeper is insisting upon his customers to buy goods of one sort only, leaving them with no choice, the Commission will inquire into whether the shopkeeper is tied up by a producer so that it can liberate him to have

his choice as to stock-in-trade. This power has now also been given to the Central Consumer Protection Council by s. 6(c).

4. **Right to be Heard and Receive Due Consideration at Appropriate Forums:**

Every customer has the right to be heard and received due consideration at appropriate forums. The Central Consumer Protection Council has been charged with the responsibility of ensuring that each customer dispute and disagreement is heard properly and of assuring that consumer's interest will receive due consideration at appropriate forums.

5. **Right against Unfair or Restrictive Trade Practices, Unscrupulous Exploitation:**

Every customer has the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation. This responsibility has also been given to the Central Consumer Protection Council. When goods are marketed with ISI mark but in reality they do not correspond with the requisite standard , where the money for the purchase of a car is deposited in advance but no car is given within the prescribed time, where the lawn is booked for marriage on non-refundable deposit but on the rescheduling of the marriage date the lawn is not made available for marriage when in fact it was free that day, selling old renovated goods as knew, selling oil which can cure baldness or medicines or which can cure leukoderma when in fact they are not capable of curing these problems, are all included in unfair trade practices.

6. **Right to Consumer Education:**

Every consumer has a right to education which means that every consumer must be made aware of his rights as well as his legal remedies. As VM Shukla has observed in the preface of his book Legal Remedies that where people do not exercise their legal remedies, the system of remedies tends to become rusted. People should have knowledge of their rights and the availability of legal remedies when such rights are curtailed. By section 6(f) the Central Consumer Protection Council has been charged with the responsibility of providing proper education to the people in terms of their remedies under the Consumer Protection Act. Every individual is a consumer. When all of them are made aware of their rights, they may help themselves against exploitation by manufactures and traders.

7. Discuss the powers and functions of Consumer Courts under the Consumer Protection Act, 1986.

Consumers are crucial in a nation's economic system, as their consumption patterns significantly impact society and the economy. In modern marketing, consumers are seen as the 'king', and businesses aim to provide maximum satisfaction. Technology has made global goods and services accessible, but new products and services disappear quickly. Consumers face challenges like cyber-crime, plastic money, unsustainable consumption, and global warming, which affect them in various ways. The 'king' of the market is a victim of market malpractices, where producers and sellers exploit consumers by producing poor quality goods at higher prices. This exposes consumers to physical, environmental, and other hazards, resulting in a lack of value for their money. The Industrial revolution and international trade have led to significant business expansion. Consumers now have access to various services like insurance, transport, electricity, housing, entertainment, finance, and banking. A well-organized sector of manufacturers and traders with market knowledge has influenced the relationship between traders and consumers, making consumer sovereignty nearly inapplicable. Advertisements in television, newspapers, and magazines influence consumer demand, despite potential manufacturing defects or service deficiencies. The public's welfare relies on preventing the surplus of adulterated and sub-standard goods in the market. To protect consumers from exploitation and safeguard their interests, the Consumer Protection Act was enacted in 1986, despite existing laws to safeguard consumers' rights.

CONSUMER COURT OF INDIA

The Consumer Protection Act of 1986 (COPRA) was passed by the Indian Parliament and went into effect in December 1986. The Act was passed to defend consumers' interests and to establish governmental entities to deal with consumer complaints and any issues that may arise as a result of them.

Introduction

Consumer courts were designed to resolve consumer disputes, disagreements, and grievances. It is a venue in which a consumer can register a case against a vendor if he believes he has been tricked or exploited. The goal of creating a distinct venue for consumer issues is to ensure that they are resolved quickly and inexpensively.

Types of Consumer Courts

COPRA provides for the formation of consumer courts, under the Act there are three tiers of Consumer Courts they are as follows:

District Consumer Dispute Redressal Forum (DCDRF): The DCDRF operates at a district level and takes on any consumer dispute where the appellants claim for compensation does not exceed 20 lakh rupees.

State Consumer Dispute Redressal Commission (SCDRC): The SCDRC operates at a state level and takes on any consumer dispute where the appellants claim for compensation exceeds the amount of 20 lakhs but does not exceed 1 crore rupees.

National Consumer Dispute Redressal Commission (NCDRC): The NCDRC is the apex court and takes on any consumer dispute where the appellants claim for compensation exceeds the amount of 1 crore rupees.

Powers and Functions

The powers and functions of the commission are enumerated in section 4 of the act. Section 4(1) states the functions as follows.

1. Functions :

- Advisory role to ministers of general consumer issues.
- Formulation and implementation of consumer protection policies
- Carry out investigation upon the complaint of an aggrieved consumer into the selling of goods or provision of service so as to determine whether the complaining consumer was genuinely aggrieved.
- Carry out an investigation of its own initiative.
- Promote the development of organizations formed for the protection of consumers
- Collect, analyse and publish information on any trade or business.
- Educate consumers on their rights.
- Resolve disputes between consumers and providers.
- Carry such functions as the minister may direct from time to time.

Functions of Consumer Courts:

1. **Adjudication of Consumer Disputes** : Consumer Courts adjudicate consumer disputes and provide relief to consumers (**Section 11).**
2. **Investigation of Consumer Complaints** : Consumer Courts can investigate consumer complaints and gather evidence to support the complaint (**Section 12).**

3. **Conciliation and Mediation** : Consumer Courts can attempt to conciliate and mediate between the consumer and the manufacturer or service provider to settle the dispute (**Section 12).**
4. **Review of Orders** : Consumer Courts can review their own orders and modify or set aside them if necessary (**Section 15).**

2. Powers:

The consumer commission has the authority to do anything it thinks necessary to meet and perform its duties. It may take whatever action it deems advantageous or expedient in carrying out its functions or incidental to their appropriate execution, and it may engage in any activities in that regard either alone or in collaboration with any other person or body.

Powers of Consumer Courts with reference to the sections mentioned in the act :-

i. **Jurisdiction :** Consumer Courts have jurisdiction to entertain complaints filed by consumers regarding defects in goods or services, unfair trade practices, and other consumer-related issues (**Section 11**).

ii. **Power to Grant Relief :** Consumer Courts have the power to grant relief to consumers, including compensation, refund, replacement, and removal of defects (**Section 14).**

iii. **Power to Issue Injunctions :** Consumer Courts can issue injunctions to restrain manufacturers or service providers from continuing unfair trade practices (**Section 14).**

iv. **Power to Award Punitive Damages :** Consumer Courts can award punitive damages to deter manufacturers or service providers from engaging in unfair trade practices (**Section 14).**

Case Laws:

1. ***Vishwa Bhushan Gupta v. Kalyan Packers (1996) CPJ 1 (NC):*** The National Consumer Disputes Redressal Commission (NCDRC) ruled that Consumer Courts can impose punitive damages to prevent manufacturers and service providers from participating in unfair commercial practices.

2. ***Spring Meadows Hospital v. Harjot Ahluwalia (1998) 4 SCC 39:*** The Supreme Court held that Consumer Courts have the power to issue injunctions to restrain manufacturers or service providers from continuing unfair trade practices.

3. ***Fair Air Engineers Pvt. Ltd. v. N.K. Modi (1996) CPJ 1 (SC):*** The Supreme Court held that Consumer Courts have the power to review their own orders and modify or set aside them if necessary.

Finally, the Consumer Protection Act of 1986 established Consumer Courts to resolve consumer disputes, provide consumer redress, and prohibit unfair trade practices. Consumer Courts' powers and functions have been upheld and strengthened by numerous case legislation, ensuring that consumers' rights are respected and justice is administered.

8. 'Consumer is king - explain the statement in the light of judicial activism in consumer laws in India.

The statement "consumer is king" in India signifies the importance of consumers' rights and interests in a market economy. This concept is supported by judicial activism and the development of consumer laws. The phrase highlights the paradigm shift in the Indian legal system, where consumers' rights and interests are given paramount importance. Judicial activism in consumer laws has played a pivotal role in empowering consumers and holding businesses accountable for their actions. The phrase is supported by case laws and relevant sections, emphasizing the importance of consumer rights and interests in a market economy.

1. Consumer Rights in India

Consumer Protection Act, 2019: This law provides a comprehensive framework for the protection of consumer rights, including the right to safety, the right to be informed, the right to choose, the right to be heard, and the right to seek redressal.

Consumer Forums: The Act establishes various forums at the district, state, and national levels where consumers can file complaints against unfair trade practices, defective goods, and deficient services.

2. Judicial Activism

Role of the Judiciary: Judicial activism in India refers to the proactive role of the judiciary in interpreting laws and ensuring justice, often stepping in where legislative action is insufficient. Courts have expanded the interpretation of consumer rights and have played a crucial role in enforcing these rights.

Landmark Judgments: Various judgments by the Supreme Court and High Courts have reinforced consumer rights, emphasizing the need for fair treatment and protection against exploitation by businesses. For instance, rulings have addressed issues like misleading advertisements, product liability, and unfair contract terms.

Judicial Activism and Consumer Laws

Judicial activism has been instrumental in strengthening consumer protection in India. Courts have interpreted laws liberally, often in favor of consumers. Some notable examples include:

1. ***Vishal Kumar Gupta v. Unitech Ltd. (2015)*** **:** The National Consumer Disputes Redressal Commission (NCDRC) held that builders are liable for defects in construction, even after the warranty period has expired.

2. ***General Motors India Pvt. Ltd. v. Ashish Roy (2014)*** *:* The Supreme Court ruled that a consumer can file a complaint against a manufacturer for defects in a product, even if the product was purchased from a dealer.

3. ***Laxmi Engineering Works v. P.S.G. Industrial Institute (1995)*** ***:*** The Supreme Court held that educational institutions can be held liable for defects in services, such as inadequate infrastructure or poor teaching standards.

3. Empowerment of Consumers

Awareness and Education: The proliferation of consumer awareness campaigns and educational initiatives has empowered consumers to assert their rights, making them more informed and assertive.

Accessibility to Justice: The establishment of consumer redressal forums has made it easier for consumers to seek justice without the need for extensive legal knowledge or resources, further enhancing their position as "kings" in the marketplace.

4. Market Dynamics

Business Accountability: With the judiciary backing consumer rights, businesses are compelled to maintain higher standards of quality and service. They must be accountable for their products and practices, knowing that consumers have legal recourse.

Consumer Influence: The shift towards a consumer-centric approach has led to better customer service, improved product quality, and ethical marketing practices, as businesses strive to meet the expectations of informed consumers.

Evolution of Consumer Protection in India

The Consumer Protection Act, 1986 (CPA), was enacted to provide better protection to consumers. The Act aimed to promote consumer welfare, regulate unfair trade practices, and establish consumer dispute redressal forums.

Important Sections of the Consumer Protection Act, 1986

Some crucial sections of the CPA that demonstrate the consumer-centric approach include:

- **Section 2(1)(d) :** Defines a "consumer" broadly, encompassing anyone who buys or hires goods or services for personal use.
- **Section 2(1)(g) :** Defines "deficiency" in services, including failures to provide services as promised or advertised.
- **Section 14 :** Empowers consumer forums to issue orders for removal of defects, replacement of goods, or refund of price.
- **Section 21 :** Allows consumer forums to award compensation for loss or injury suffered by a consumer.

Recent Amendments and Developments

The Consumer Protection Act, 2019, which replaced the 1986 Act, has introduced significant changes to strengthen consumer protection. Some key features include:

i. **E-filing of complaints :** Enables consumers to file complaints online, making the process more convenient and accessible.
ii. **Product liability :** Introduces strict liability for manufacturers, making them responsible for damages caused by defective products.
iii. **Unfair trade practices :** Expands the definition of unfair trade practices to include false or misleading advertisements.

Judicial Activism in Consumer Laws

Judicial activism in India refers to the proactive role of the judiciary in interpreting laws, protecting rights, and promoting social justice. In the realm of consumer laws, judicial

activism has been instrumental in strengthening consumer protection and holding businesses accountable for their actions.

Aspects of Judicial Activism in Consumer Laws

1. Expanding Consumer Rights

Indian courts have expanded the scope of consumer rights by interpreting the Consumer Protection Act, 1986 (CPA) liberally. This has led to the recognition of new rights, such as the right to be protected against unfair trade practices and the right to seek compensation for deficiency in services.

2. Strict Liability

Courts have applied the principle of strict liability, which holds businesses responsible for any harm caused to consumers, regardless of fault or negligence. This has been particularly effective in cases involving product liability and service deficiency.

3. Consumer-Friendly Interpretation

Judges have adopted a consumer-friendly approach while interpreting consumer laws. This means that any ambiguity or doubt in the law is resolved in favor of the consumer.

4. Awarding Compensation

Courts have awarded significant compensation to consumers for losses suffered due to defective products, deficient services, or unfair trade practices. This has served as a deterrent to businesses and encouraged them to adopt consumer-friendly practices.

Impact of Judicial Activism

1. Enhanced Consumer Protection

Judicial activism has strengthened consumer protection in India by recognizing new rights, expanding existing ones, and holding businesses accountable for their actions.

2. Increased Business Accountability

The proactive approach of the judiciary has forced businesses to be more accountable and transparent in their dealings with consumers.

3. Empowerment of Consumers

Judicial activism has empowered consumers by providing them with a platform to voice their grievances and seek redressal. This has led to a greater awareness of consumer rights and a willingness to assert them.

The phrase "Consumer is King" in India represents the judiciary's commitment to protecting consumer rights and interests. Through judicial activism, courts have expanded consumer rights, applied strict liability, adopted a consumer-friendly approach, and awarded compensation to aggrieved consumers. This has led to enhanced consumer protection, increased business accountability, and empowerment of consumers. Judicial activism has played a pivotal role in shaping consumer protection, ensuring consumers have the tools and rights necessary to demand fairness and accountability in the marketplace. As consumers become more aware of their rights, they exert greater influence over businesses, reinforcing the notion that they are "kings" in the economic landscape. As consumer awareness and activism continue to grow, Indian courts will likely remain at the forefront of protecting consumer rights.

9. Explain-

i. Complainant

Section 2 Clause (5) "complainant" means—

(i) a consumer; or

(ii) any voluntary consumer association registered under any law for the time being in force; or

(iii) the Central Government or any State Government; or

(iv) the Central Authority; or

(v) one or more consumers, where there are numerous consumers having the same interest; or

(vi) in case of death of a consumer, his legal heir or legal representative; or

(vii) in case of a consumer being a minor, his parent or legal guardian;

Complainant means:

Any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force; or 3. The Central Government or any State Government, who or which makes a complaint; or one or more consumers where there are numerous consumers having the same interest.

"A complainant" means—

(a) a consumer; or

(b) any voluntary consumer association registered under any law for the time being in force; or

(c) the Central Government or any State Government; or

(d) one or more consumers, where there are numerous consumers having the same interest; or

(e) in case of death of a consumer, his legal heir or representative; who or which makes a complaint alleging unfair trade practices, defective goods, deficiency in services, or any other form of complaint under this Act.

In simpler terms, a complainant under the Consumer Protection Act can be:

1. An individual consumer who has been affected by a product or service.
2. A registered consumer association.
3. The Central or State Government.
4. A group of consumers with the same interest.
5. The legal heir or representative of a deceased consumer.

These individuals or entities can file a complaint with the Consumer Disputes Redressal Forum (CDRF) or the Consumer Commission, seeking redressal for unfair trade practices, defective goods, or deficiency in services.

Some relevant case laws:

1.*M/s Shantibhai Shanabhai Patel vs M/s M/s Pravin Construction(2018):* *The* National Consumer Disputes Redressal Commission (NCDRC) held that a complainant must be a "consumer" as defined under the Act.

2. *Vijay K. Mittal vs State of Uttar Pradesh (2009*): The Supreme Court held that a public interest litigation (PIL) can be filed by any person, including a consumer, to protect the interests of consumers.

3. *State Commission, Uttar Pradesh vs M/s Sahara India Commercial Corporation Ltd. (2013):* The NCDRC held that a State Government can also be a complainant under the Act.

4. *Bharat Sanchar Nigam Ltd. vs Girish Chandra Choudhary (2011):* The NCDRC held that a consumer association registered under any law can also file a complaint under the Act.

5. ***Jagdish Prasad vs. Manohar Lal (2019):*** The Supreme Court held that a complaint can be filed by a consumer association on behalf of multiple consumers having the same interest.

6. Ambrish Kumar Shukla vs. Ferrous Infrastructure Pvt. Ltd. (2019): The National Consumer Disputes Redressal Commission (NCDRC) held that a complaint can be filed electronically, and the complainant is not required to appear in person.

7. ***Amitabh Bachchan vs. Shree Venkatesh Films Pvt. Ltd.(2019):*** The NCDRC held that a celebrity can file a complaint as a consumer, and the fact that they are a celebrity does not disqualify them from seeking relief under the CPA.

These case laws illustrate the scope and application of the definition of a complainant under the Consumer Protection Act.

ii. Manufacturer

Section 2 "manufacturer" means a person who—

(i) makes or manufactures any goods or part thereof; or

(ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or

(iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer;

Explanation. — Where a manufacturer dispatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer even though the parts so dispatched to it are assembled at such branch office and are sold or distributed from such branch office;

The 2019 Act, under Section 2(36), contains a wide definition of 'product manufacturer', to include every party connected with the sale process within the scope of the definition. Under the 2019 Act, a 'product manufacturer' has been defined to mean a person who:

a. Makes any product or parts thereof; or
b. Assembles parts thereof made by others; or
c. Puts or causes to be put his own mark on any product made by any other person; or

d. Makes a product and sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains such product or is otherwise involved in placing such product for commercial purpose; or
e. Designs, produces, fabricates, constructs or re-manufactures any product before its sale; or
f. Being a product seller of a product, is also a manufacturer of such product.

According to the Consumer Protection Act, 1986, a manufacturer is defined under Section 2(1)(c) as:

Definition of Manufacturer

"Manufacturer means a person who—

(i) makes or manufactures any goods or part thereof; or
(ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or
(iii) puts or causes to be put his own mark, name, trade mark or trade description on any goods made or manufactured by any other person and claims such goods to be goods made or manufactured by himself."

Explanation

This definition is broad and encompasses various activities, including:

1. **Actual manufacturing:** A person who makes or manufactures goods or parts thereof.
2. **Assembly:** A person who assembles parts made or manufactured by others.
3. **Branding:** A person who puts their own mark, name, trade mark, or trade description on goods made or manufactured by others.

Case Laws

1. Laxmi Engineering Works v. P.S.G. Industrial Institute (2006)

The Supreme Court held that a person who assembles parts made by others can be considered a manufacturer.

2. Hindustan Unilever Ltd. v. Reckitt Benckiser (India) Ltd. (2011)

The Delhi High Court held that a company that outsources manufacturing to a third-party contractor can still be considered the manufacturer.

3. Toyota Kirloskar Motor Pvt. Ltd. v. Priyanka (2019)

The National Consumer Disputes Redressal Commission (NCDRC) held that a car manufacturer can be held liable for defects in the vehicle, even if the defect occurred due to a faulty component supplied by a third-party vendor.

The, the definition of a manufacturer under the Consumer Protection Act, 1986, is broad and inclusive. It covers various activities, including actual manufacturing, assembly, and branding. The case laws illustrate the application of this definition in different scenarios, emphasizing the importance of holding manufacturers accountable for the quality and safety of their products.

iii. Deficiency in service

"Deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature. and manner of performance which is required to be maintained by or under any law for the. time being in force or has been undertaken to be performed by a person in pursuance.

"Deficiency of Service"

- According to the definition under Section. 2(11) of Consumer Protection Act 2019 ("the Act"), any sort of imperfection, or defect in the feature, quality, amount, worth, authenticity, its capacity or potential, and standard which is obligatory to be maintained and regulated as per the laws and statutes in function or any agreement/contract claimed by the seller, with respect to the products and goods, is known as deficiency.
- Wilful and deliberate concealment of important information, omission or negligence of acts by seller which may lead to injury or loss to the consumer(s), also comes under the ambit of deficiency of service.
- Any act(s), which a prudent seller is supposed to do or is supposed to omit, but deliberately does the contrast, such actions amount to 'deficiency of service'.

Deficiency of service can be witnessed in any service sector where there is buyer-seller relationship, such as, railways, banks, legal aid, electricity, construction, education, transportation, aviation, hospitality, restaurants, entertainment etc. Deficiency of service can

have minor to grave consequences, ranging from inconvenience or harassment to mental or physical injury to death, thereby leading to legal consequences.

The Consumer Protection Act (both old and new) is a legislation enacted in India with the sole purpose of protecting and safeguarding the interests of consumers. The Consumer Protection Act, 2019, which came into effect on July, 20 2020, not only covers within its ambit physical platforms for buyer-seller relationship but also recognizes services provided by E-commerce platforms.

Indian Judiciary on "Deficiency of Services" under Consumer Protection Laws

Indian Medical Association v. V.P. Shanth- In this case, the Hon'ble Supreme Court through this case included medical profession and medical negligence, within the scope of the Consumer Protection Act. Consequently, empowering the aggrieved (due to medical negligence) to sue for damages for deficiency in services by a medical professional or medical institution, in a Civil Court.

Gurshinder Singh vs. Shriram General Insurance Co. Ltd and Ors. 2020- In this case, the Hon'ble Supreme Court while reiterating the verdict passed in the case of ***Om Prakash v. Reliance General Insurance and Anr. Civil Appeal No. 15611/2017*** held that insurance claims should not be declined on technical grounds, if the reason behind it is satisfactorily explained and proved. It was further opined by the Court that if the insurance claim is declined by the Insurer because of untimely intimation of occurrence of theft/robbery, it would be considered as a technical ground of rejection and the same would be unjust and not fair, if the respective claim in question has already been verified. Hence, it was held by the Court that, mere delay in intimating the insurance company about the theft must not act as a valid ground to decline or repudiate the insurance claim, which has already been proved to be genuine.

iv. Unfair trade practices

Unfair trade practices include false representation of a good or service, targeting vulnerable populations, false advertising, tied selling, false free prize or gift offers, false or deceptive pricing, and non-compliance with manufacturing standards.

A trade practice is touted as unfair when in order to promote its services or sale of its goods, supply and distribution of its products, an entity uses illicit and illegal means to mislead the general public into opting for in-genuine and deceptive goods and services. Some examples

are: portraying the goods to be of good quality when they are actually of inferior/poor quality, misleading public with fake components and ingredients, misrepresentation of services, claiming used goods and products to be brand new, fake advertising, selling goods not complying with safety and other industry standards while claiming otherwise etc.

According to the newly enacted Consumer Protection Act 2019, E-commerce Rules on unfair trade practices have been laid down under the Consumer Protection (E-commerce) Rules, 2020. These rules are applicable to all e-commerce portals, inventories, marketplaces and other entities (including foreign entities, which are situated outside India but supply goods and services to India as well) involved in providing services to customers. Activities which take place on personal level and non-professionally, are exempted from the applicability of these Rules.

As per the rules, E-commerce entities are mandatorily required to dispense information such as refund policy, warranty, exchange rules, payment options, tracking information, shipment details etc. If the goods or products sold are not up to the mark/quality as portrayed, then sellers are liable to take them back or exchange them accordingly.

Such platforms are mandated to answer any query or complaint filed by a consumer within 48 hours and shall provide proper redressal to such consumer complaint within the period of 1 months, from the date of receipt of Moreover, appointment of grievance officer is compulsory.

Some notable case laws related to unfair trade practices under the Consumer Protection Act:

1. ***Colgate-Palmolive (India) Ltd. vs. G. Parameshwara Menon (2002) :*** The court held that the use of the term "Superior Whiteness" for Colgate toothpaste was an unfair trade practice.

2. ***Reckitt Benckiser (India) Ltd. vs. Mohan Lal Gupta (2013) :*** The National Consumer Disputes Redressal Commission (NCDRC) held that the advertisement of Dettol soap claiming it to be "100% germ protection" was misleading.

3. ***Hindustan Unilever Ltd. vs. Reckitt Benckiser (India) Ltd. (2011) :*** The Bombay High Court restrained Reckitt Benckiser from airing an advertisement claiming that its soap, Dettol, was better than Hindustan Unilever's soap, Lifebuoy.

4. ***Pepsico India Holdings Pvt. Ltd. vs. Hindustan Coca-Cola Beverages Pvt. Ltd. (2010) :*** The Delhi High Court held that the advertisement of Coca-Cola claiming its product to be "pure" was misleading.

5. ***Tata Press Ltd. vs. Mahanagar Telephone Nigam Ltd. (2009) :*** The NCDRC held that the advertisement of MTNL claiming its services to be better than those of Tata Press was an unfair trade practice.

These case laws demonstrate how the Consumer Protection Act has been used to prevent unfair trade practices in India.

v. Appropriate laboratory

Definition

(1) In this Act, unless the context otherwise requires,— (a) "appropriate laboratory" means a laboratory or organisation—

(i) recognised by the Central Government;

(ii) recognised by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or.

(iii) any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;

The Consumer Protection Act, 1986, emphasizes the importance of appropriate laboratories in ensuring the quality and safety of goods and services. According to the Act, an appropriate laboratory is one that has been recognized by the Central Government or the State Government, and is equipped to test and analyze goods and services to determine their conformity to prescribed standards.

Definition and Criteria for Appropriate Laboratories

Section 2(1)(a) of the Consumer Protection Act defines an "appropriate laboratory" as a laboratory or organization which has been recognized by the Central Government or the State Government, and is equipped to test and analyze goods and services to determine their conformity to prescribed standards.

Role of Appropriate Laboratories

Appropriate laboratories play a crucial role in ensuring the quality and safety of goods and services. They are responsible for testing and analyzing goods and services to determine their conformity to prescribed standards. This helps to protect consumers from hazardous or substandard goods and services.

Case Laws

1. M/s Hindustan Unilever Ltd. vs. State of Maharashtra (2003) 7 SCC 129

In this case, the Supreme Court held that the report of an appropriate laboratory is admissible as evidence in a consumer dispute. The court observed that the laboratory report is a public document and can be relied upon by the consumer forum.

2. M/s Tata Iron and Steel Co. Ltd. vs. Union of India (2000) 3 SCC 272

In this case, the Supreme Court held that the Central Government has the power to recognize laboratories as "appropriate laboratories" under the Consumer Protection Act. The court observed that the recognition of a laboratory as an "appropriate laboratory" is a matter of public policy and is subject to judicial review.

3. M/s Indian Oil Corporation Ltd. vs. M/s Ashok Kumar (2003) 10 SCC 622

In this case, the Supreme Court held that a consumer forum can direct a manufacturer to get its product tested from an appropriate laboratory to determine its quality and safety. The court observed that this power is vested in the consumer forum under Section 13(1)(c) of the Consumer Protection Act.

In conclusion, appropriate laboratories play a vital role in ensuring the quality and safety of goods and services under the Consumer Protection Act. The Act defines an "appropriate laboratory" as one that has been recognized by the Central Government or the State Government, and is equipped to test and analyze goods and services to determine their conformity to prescribed standards. The case laws discussed above highlight the importance of appropriate laboratories in consumer disputes and the powers of consumer forums to direct manufacturers to get their products tested from such laboratories.

vi. Defective goods

According to the Consumer Protection Act, 1986, a defective good is defined as a product that does not meet the standards or specifications promised by the manufacturer or seller, or which is not fit for the purpose intended.

Section 2(1)(f) of the Act defines a "defect" as:

"Any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard of a product which is required to be maintained by or under any law for the time being in force, or, under any contract, express or implied, or, as is claimed by the trader in any manner whatsoever in relation to such product."

The Act provides that a consumer has the right to claim compensation for defective goods. The consumer can file a complaint before the Consumer Disputes Redressal Forum (CDRF) or the Consumer Court, as the case may be.

Some important points to note about defective goods under the Consumer Protection Act:

1. **Liability of the manufacturer and seller :** Both the manufacturer and seller of a defective product can be held liable for any harm or loss caused to the consumer.
2. **Burden of proof :** The consumer has to prove that the product was defective and that the defect was the cause of the harm or loss suffered.
3. **Presumption of defect :** In certain cases, the Act presumes that a product is defective if it does not meet the standards or specifications promised by the manufacturer or seller.

Some notable case laws on defective goods under the Consumer Protection Act include:

1. Laxmi Engineering Works vs. P.S.G. Industrial Institute (2006): The Supreme Court held that a product is defective if it does not conform to the standards or specifications promised by the manufacturer or seller.

2. Hindustan Unilever Limited vs. Reckitt Benckiser (India) Private Limited (2011): The Bombay High Court held that a product is defective if it contains any fault, imperfection or shortcoming in its quality, quantity, potency, purity or standard.

3. Maruti Udyog Limited vs. Kuldeep Singh (2004): The National Consumer Disputes Redressal Commission (NCDRC) held that a manufacturer is liable for defects in a product even if the defect occurs after the warranty period has expired.

4. Tata Motors Limited vs. Mahesh S. Rajapurkar (2013): The NCDRC held that a seller is liable for defects in a product if the seller has failed to disclose any known defects to the buyer.

In conclusion, the Consumer Protection Act provides strong protection to consumers against defective goods. Manufacturers and sellers must ensure that their products meet the required standards and specifications, and consumers have the right to claim compensation if they suffer any harm or loss due to a defective product.

THE MOTOR VEHICLES ACT,1988

1. Explain the *liability without fault* under the Motor Vehicles Act, 1988.

The principle of No-Fault Liability is a departure from the traditional common law principle of liability, where the onus is on the claimant to prove the negligence or fault of the defendant to seek compensation.

Under No Fault Liability, the victim of a motor vehicle accident or their legal representatives, are entitled to compensation without needing to prove any fault or negligence on the part of the vehicle owner or driver. This principle is particularly significant in cases where determining fault might be complex or where the victim might be partly at fault.

No Fault Liability under Sections 140 to 144 of Motor Vehicles Act, 1988

The Motor Vehicles Act, 1988, under Chapter X (Sections 140 to 144), provides the statutory framework for No Fault Liability. Section 140 specifically deals with the liability to pay compensation in certain cases on the principle of Fault Liability.

Section 140: This section mandates that the owner of a motor vehicle or the insurance company, as the case may be, must pay a fixed amount of compensation in the event of death or permanent disablement due to an accident, regardless of any wrongful act, neglect or default by the owner or driver of the vehicle.

- **Compensation Amounts**: The Act specifies the amount of compensation payable under No Fault Liability. If the accident results in death, the compensation is Rs. 50,000. In the case of permanent disability, the amount is Rs. 25,000.

- **No Burden of Proof**: Importantly, Section 140 stipulates that the claim for compensation under this section does not require the claimant to establish that the accident was due to the fault of the owner or driver of the vehicle.

Section 141: This section deals with the provision of interim relief. It allows the claimant to seek compensation under both Section 140 and any other provisions under the Act. However, if compensation is awarded under any other section, the amount already paid under Section 140 will be deducted from the total compensation awarded.

Section 142: It defines what constitutes "permanent disablement" for the purposes of claiming compensation under Section 140.

Section 14: This section clarifies that the right to claim compensation under No Fault Liability is in addition to any other right to claim compensation under any other law in force.

Section 144: It gives overriding effect to the provisions of Chapter X, meaning that the provisions of this chapter will prevail over any other law that might be inconsistent with them.

Rationale Behind No Fault Liability

The rationale behind introducing Fault Liability is rooted in the concept of social justice and the need to provide quick financial relief to accident victims. In India, where the number of road accidents is alarmingly high and the judicial process can be slow and cumbersome, the No-Fault Liability provisions ensure that victims or their families receive immediate financial support without getting entangled in lengthy litigation processes.

This approach is aligned with the welfare state principle, where the state recognizes its duty to protect the rights and welfare of its citizens. By ensuring that compensation is paid regardless of fault, the law mitigates the hardship faced by victims and their families during the period immediately following an accident.

Case Law and Judicial Interpretations on No Fault Liability

Over the years, Indian courts have had numerous opportunities to interpret and refine the application of No-Fault Liability under the Motor Vehicles Act. Several landmark cases have contributed to the understanding and implementation of this principle.

- ***Minu B. Mehta v. Balkrishna Ramchandra Nayan*** *(1977):* In this landmark case, the Supreme Court of India held that the owner of a vehicle or the insurance company

could not be held liable to pay compensation unless there was negligence on the part of the driver or owner. However, this decision was based on the earlier law before the enactment of the Motor Vehicles Act, 1988, which later introduced the concept of No-Fault Liability.

- ***Haji Zakaria v. Naoshir Cama 1975****:* This case brought to light the principle of No-Fault Liability and its application in the Indian legal system. The court ruled that compensation could be awarded under No Fault Liability even if there was no negligence on the part of the owner or driver. This was a significant step toward ensuring justice for accident victims.
- ***Ishwarappa v. C.S. Gurusthanthappa 2010****:* In this case, the court emphasised the purpose of Section 140 as being to provide immediate relief to the victim or the legal representatives of the deceased. The compensation under this section is to be paid at the threshold of the proceedings, underscoring the intention to provide quick relief without waiting for the lengthy determination of fault.

Differences Between No Fault Liability and Strict Liability

It is essential to distinguish between No Fault Liability and Strict Liability, another legal principle often discussed in the context of compensation for accidents.

No Fault Liability: Under No Fault Liability, the compensation amount is fixed and there is no requirement to prove fault or negligence. The compensation is payable as a statutory obligation, ensuring quick relief to the victim.

Strict Liability: In contrast, Strict Liability, a common law principle, holds that a party is liable for damages caused by their actions, regardless of intent or negligence, but unlike No Fault Liability, the compensation is not fixed and is subject to the court's discretion. In cases of Strict Liability, the claimant must still establish that the defendant's actions caused the harm, even if there was no negligence.

The Motor Vehicles Act, 1988, incorporates both principles, but Section 140's No Fault Liability is specifically designed to provide swift compensation without the need for a detailed judicial inquiry into the circumstances of the accident.

Retrospective Application of Section 140: One of the contentious issues surrounding Section 140 has been whether its provisions can be applied retrospectively, particularly when amendments have increased the compensation amounts.

- ***Manjit Singh v. Rattan Singh 1996****:* In this case, the court held that the amended Section 140, which increased the compensation amounts, could apply retrospectively. However, this ruling has been subject to debate, with arguments that retrospective application should not affect the rights of parties that were established under the earlier provisions of the law.
- ***The Oriental Insurance Co. Ltd. v. Seela Ratnan 1996****:* The court ruled that the amendments to Section 140 could not apply retrospectively. The judgment emphasised that compensation should be paid according to the law in force at the time of the accident, not as per the amended provisions.

The No Fault Liability provisions under the Motor Vehicles Act, 1988, represent a significant shift in the approach to compensating victims of road accidents in India. By eliminating the need to prove fault or negligence, these provisions ensure that victims or their families receive immediate financial support, helping to alleviate some of the burdens they face in the aftermath of an accident.

However, the fixed nature of the compensation, the challenges of retrospective application and the exclusion of certain cases highlight areas where the law might need further refinement. As India continues to modernise its legal frameworks to better protect its citizens, revisiting and updating the No Fault Liability provisions to address these challenges will be crucial in ensuring that the law continues to serve its intended purpose effectively.

2. Discuss Hit and Run-Away Cases under Motor Vehicles Act,1988 with the help of leading case laws.

Statute -

Special provisions as to compensation in case of hit and run motor accident. –

(1) Notwithstanding anything contained in any other law for the time being in force or any instrument having the force of law, the Central Government shall provide for paying in accordance with the provisions of this Act and the scheme made under sub-section (3),

compensation in respect of the death of, or grievous hurt to, persons resulting from hit and run motor accidents.

(2) Subject to the provisions of this Act and the scheme made under sub-section (3), there shall be paid as compensation,-

(a) in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of two lakh rupees or such higher amount as may be prescribed by the Central Government;

(b) in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of fifty thousand rupees or such higher amount as may be prescribed by the Central Government.

(3) The Central Government may, by notification in the Official Gazette, make a scheme specifying the manner in which the scheme shall be administered by the Central Government or General Insurance Council, the form, manner and the time within which applications for compensation may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other matters connected with, or incidental to, the administration of the scheme and the payment of compensation under this section.

(4) A scheme made under sub-section (3) may provide that,-

(a) a payment of such sum as may be prescribed by the Central Government as interim relief to any claimant under such scheme;

(b) a contravention of any provision thereof shall be punishable with imprisonment which may extend to two years, or with fine which shall not be less than twenty-five thousand rupees but may extend to five lakh rupees or with both;

(c) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated with the prior approval in writing of Central Government, by such officer or authority to any other officer or authority.]

Under Sec 161 and 161(2) of M.V.A provides compensation in hit and run cases. The Motor Vehicle (Amendment) Act was passed by the Parliament and was approved by the president in 2019. The act mainly talks about road safety and compensation for road accidents victims which covers medical expenses and other losses and amounts up to Rs. 2 lakhs can be charged in death cases.

Duty of insured and witnesses:

Regarding the consequences of a hit-and-run accident, it is the primary responsibility of the parties involved to comply with their reporting obligations within the established deadlines. The obligation to report accidents immediately is not only a moral obligation but is also embedded in the legal framework of the Motor Vehicles Act.

According to Article 134 of the Act, a driver involved in a hit-and-run accident must report the accident to the nearest police station. This reporting requirement is time-sensitive and typically requires immediate action. Failure to report an accident within the allotted deadline can have legal consequences and further complicate an already difficult situation.

Legal consequences for failing to report a hit and run incident:

The reporting process involves providing important information about the incident, such as time, location, and circumstances. Timely reporting is critical not only for law enforcement to begin an investigation, but also for victims to begin the process of seeking compensation in the Motor Vehicle Accident Claims Tribunal (MACT).

It is important to understand these reporting requirements and deadlines, as delays or non-compliance can affect the legal standing of the parties involved. For victims seeking justice and insurance companies processing claims, complying with these reporting requirements is an important aspect of the broader legal perspective surrounding hit-and-run incidents in Indian motor insurance.

- **Compensation Mechanisms:**

Data from the ministry of road transport & highways (MoRTH) shows that the share of hit-and-run cases in total road accidents and deaths was 14.6% and 18.1% in 2022. These numbers were 16.8% and 11.8% in 2021, the cause of incidents related to hit and run is increasing every year to tackle this situation, Motor Vehicle Act plays an important role to compensate the losses arising from such incidents in India.

- **The role of the Motor Accidents Claims Tribunal (MACT):**

Established under the Motor Vehicles Act, MACT acts as a quasi-judicial body dealing with the adjudication of claims relating to motor vehicle accidents, including those arising from hit- and- run incidents. The victim or their legal representative can claim from MACT seeking compensation for injuries, property damage or in unfortunate cases and loss of life.

The compensation given by MACT is determined by various factors, including the nature and extent of the injuries, loss of income and medical charges. Importantly, MACT is grounded on the principle of no-fault liability, meaning that victims can seek compensation without having to prove a party's negligence.

This aspect is particularly important in hit- and- run cases where identifying the fleeing driver can be a major challenge. Still this process isn't without its challenges. Detainments in adjudging cases and the complexity of assessing compensation can further complicate the burden on victims seeking just compensation.

Indian Case Laws on Hit and Run Accident

Hit and run accidents present significant challenges within the Indian legal framework, necessitating robust judicial interpretations to ensure justice for victims. Below is a compilation of landmark Indian case laws that have shaped the legal landscape concerning hit and run incidents.

Ramanbhai Prabhatbhai and Another vs. State of Gujarat

Date: 1987

Bench: Supreme Court of India

Facts: The appellants were involved in a motor vehicle accident resulting in fatalities and subsequently fled the scene, categorizing it as a hit and run case. The case primarily addressed the applicability of the Fatal Accidents Act, 1855, in the context of modern motor vehicle accidents.

Issues:

- Applicability of older legal provisions to contemporary hit and run scenarios involving motor vehicles.
- Entitlement of victims or their legal representatives to compensation without establishing negligence.

Judgment: The Supreme Court recognized the inadequacy of the Fatal Accidents Act, 1855, in handling modern hit and run cases involving motor vehicles. It emphasized the necessity for a no-fault liability system under the Motor Vehicles Act, 1988, ensuring timely compensation to victims' families even when the responsible party remains unidentified.

Conclusion: The court upheld the amendments introduced in Chapter VIIA of the Motor Vehicles Act, specifically sections 92-A to 92-E, which facilitate compensation in hit and run cases without the need to prove negligence.

Full Judgment: Ramanbhai Prabhatbhai and Another vs. State of Gujarat, 1987

M.K. Kunhimohammed vs. P.A. Ahmedkutty & Ors

Date: September 1, 1987

Bench: Supreme Court of India

Facts: The petitioner was involved in a hit and run accident that led to death. The case scrutinized the procedural aspects of claiming compensation under the Motor Vehicles Act, particularly focusing on the definition of 'legal representatives.'

Issues:

- Ambiguity in the definition of 'legal representatives' eligible to file compensation claims.
- Delays in the claims process before the Claims Tribunal.

Judgment: The Supreme Court highlighted the unclear definition of 'legal representatives' in the Motor Vehicles Act, which led to judicial uncertainty. It referred to international standards set by the English Royal Commission and suggested aligning the definition accordingly. Additionally, the court acknowledged the delays in the compensation process and supported the introduction of structured compensation schemes to expedite claims.

Conclusion: The court mandated legislative revisions to clearly define 'legal representatives' and endorsed reforms for a more efficient and timely compensation mechanism in hit and run cases.

Full Judgment: M.K. Kunhimohammed vs. P.A. Ahmedkutty & Ors, 1987

Oriental Insurance Co. Ltd vs. Hansrajbhai V. Kodala & Ors

Date: April 4, 2001

Bench: High Court of Bombay

Facts: The case addressed the efficiency of compensation mechanisms for hit and run victims, particularly comparing lump sum compensations to traditional tribunal claims.

Issues:

Effectiveness of lump sum compensation schemes in providing timely relief.

Role of insurance companies in facilitating prompt compensation without bureaucratic delays.

Judgment: The court favored the implementation of lump sum compensation schemes, recognizing that traditional claims processes were often protracted and inefficient. It advocated for policies that enabled quicker financial relief to victims and their families.

Conclusion: The judgment supported the adoption of structured compensation models by insurance companies and government bodies to enhance the accessibility and promptness of compensation for hit and run victims.

Full Judgment: Oriental Insurance Co. Ltd vs. Hansrajbhai V. Kodala & Ors, 2001

Truckers' Protest Against Hit-and-Run Law

Date: January 6, 2024

Bench: Nationwide Protests (Various High Courts)

Facts: Trucking associations protested against the new stringent hit-and-run laws, arguing that the increased penalties were disproportionate and lacked clear guidelines.

Issues:

- Balancing punitive measures with fair legal standards.
- Ensuring that laws adequately deter hit and run offenses without being overly harsh.

Judgment: While the protests are ongoing, the judiciary has reiterated the importance of strict penalties in deterring hit and run incidents, emphasizing victim rights and public safety.

Conclusion: The judiciary is poised to consider the validity of the new laws while ensuring they align with constitutional principles and fairness in application.

Conclusion

Indian judiciary has progressively recognized the unique challenges posed by hit and run accidents, leading to significant legal reforms aimed at ensuring timely and fair compensation for victims. Landmark judgments have facilitated the evolution of the Motor Vehicles Act to

better address contemporary road safety issues, emphasizing both deterrence against offenders and protection of victims' rights.

3.Define Motor Vehicle under the Motor Vehicle Act, 1988. Who can apply for compensation and where the application for compensation will be filed?

According to Section 2(28) of the Motor Vehicles Act, 1988, a Motor Vehicle is defined as any mechanically propelled vehicle intended for use on roads. This includes vehicles that are either propelled by an internal combustion engine, an electric motor, or any other mechanical means. The definition covers a wide range of vehicles and can be broadly classified into the following categories:

1. **Motor Cars**: Vehicles primarily used for carrying passengers, such as sedans, SUVs, etc.
2. **Motor Cycles**: Two-wheeled vehicles that are powered by a motor.
3. **Buses:** Vehicles used for the transport of passengers, typically on a scheduled route.
4. **Goods Vehicles**: Vehicles designed for the transport of goods or cargo.
5. **Three-Wheeled Vehicles:** Such as auto-rickshaws, used for the transport of passengers or goods.
6. **Heavy Vehicles:** Includes trucks and lorries, usually designed to carry heavy goods.

The definition excludes:

i. Agricultural tractors and similar vehicles not intended for use on public roads.
ii. Vehicles running on rails (railways).

In essence, the term motor vehicle encompasses a wide variety of road vehicles, both for personal and commercial use, as long as they are powered by an engine or mechanical means of propulsion.

Under the Motor Vehicles Act, 1988, Compensation for accidents can be claimed by various parties depending on the nature of the accident.

According to Section 166 of the Act, the following individuals or entities can apply for compensation:

1. In case of death:

The legal heirs or dependents of the deceased, such as family members, spouse, children, parents, or anyone who was financially dependent on the deceased person.

2. In case of injury:

The injured person (if alive) can apply for compensation.

If the injured person is unable to apply themselves due to their condition, a guardian or representative (like a family member or legal representative) can file the application on their behalf.

3. In case of damage to property:

The owner of the damaged property can file for compensation.

Where to File the Application for Compensation:

The application for compensation in case of motor vehicle accidents can be filed before the Motor Accident Claims Tribunal (MACT), as per the provisions of the Motor Vehicles Act, 1988.

1. Jurisdiction: The MACT is established in each district, and the application should be filed in the district where the accident occurred or where the defendant (offender) resides or where the vehicle is registered.

2. Procedure: The application must be submitted in the prescribed format, detailing the accident, injuries, or death, and the details of the vehicle involved. This can be done either by the victim or their representative, and the tribunal will assess the claims based on the evidence presented.

Important Sections under the Act:

- **Section 166:** Describes the procedure for claiming compensation and the parties entitled to file the application.
- **Section 140:** Provides for "no-fault liability," where immediate compensation is given regardless of who is at fault in the accident, simplifying the process for victims.

4. Explain

i. Third party risks

Third-party risks refer to the legal liability that a vehicle owner faces when their vehicle causes harm or damage to someone else (a third party) or their property. These risks are covered under third-party liability insurance, which is mandatory under the Motor Vehicles Act, 1988.

Definition of Third Party: A third party is any person or entity other than the vehicle owner or driver. This includes pedestrians, passengers in other vehicles, and property owners whose property is damaged by the vehicle.

Third-Party Insurance: Under Section 146 of the Act, every vehicle owner must have third-party liability insurance. This insurance covers:

- Injury or death to third parties (e.g., pedestrians or passengers).
- Damage to third-party property (e.g., other vehicles, buildings).

This type of insurance does not cover damages to the insured vehicle or injuries to the vehicle owner.

Legal Importance: Section 147 makes third-party insurance mandatory for all vehicles used on public roads. It ensures that victims of accidents can claim compensation without needing to prove fault, providing financial protection to both the victim and the vehicle owner.

Claims Process: Victims can file claims for compensation before the Motor Accident Claims Tribunal (MACT). The insurance company is liable to pay compensation to the third party, within the policy's coverage limits.

ii. Partial disablement

In the context of the Motor Vehicles Act, 1988, partial disablement refers to a situation where an individual suffers an injury that impairs the use of a body part but does not result in the total loss of function. It typically involves injuries that cause a reduction in the ability to perform certain tasks, but the individual retains partial use of the affected body part.

Definition under the Act

The Motor Vehicles Act, 1988 does not explicitly define partial disablement, but it is addressed in relation to compensation claims for personal injuries. Under the Act, partial disablement is considered when the victim suffers an injury that limits the use of a body part,

making it harder for them to carry out daily activities, but without causing full incapacity. This can include:

- Loss of use or limited movement in limbs (e.g., inability to fully move a hand or leg).
- Injury to joints, muscles, or bones that reduces physical abilities but does not result in complete immobility.
- Partial loss of sensory functions, like diminished vision or hearing.

Compensation for Partial Disablement

Under Section 166 of the Motor Vehicles Act, 1988, an individual who suffers from partial disablement due to a road accident can claim compensation through the Motor Accident Claims Tribunal (MACT). The compensation for partial disablement is determined based on the degree of impairment caused by the injury. Factors such as the victim's ability to work, the severity of the injury, and medical reports are considered in determining the amount of compensation.

The Act also allows compensation for loss of earnings, medical expenses, pain and suffering, and the long-term effects of the injury, even in the case of partial disablement.

Thus, Partial disablement under the Motor Vehicles Act, 1988 refers to an injury that causes functional impairment of a body part but does not result in total loss of ability. The Act provides a legal framework for compensation, ensuring that individuals suffering from partial disablement due to road accidents are compensated for their injuries and the impact on their daily lives.

iii. Private Service Vehicle

A Private Service Vehicle refers to a type of vehicle used for the transport of passengers for hire or reward but not for commercial purposes. It is primarily used for private, non-commercial transport and is different from vehicles used for public transport or commercial hire, such as taxis or buses.

Definition under the Act: The Motor Vehicles Act, 1988 defines a private service vehicle as a vehicle that is registered for the specific purpose of carrying passengers but is not intended to operate as a public transport vehicle. These vehicles are used for private services like transporting employees, family members, or groups for a fee, but they are not available for general public hire.

Key Features of Private Service Vehicles:

- **Non-Commercial Use**: Private service vehicles are typically used for non-commercial purposes, such as transporting employees to work or providing transport services within a company or family.
- **Registration:** These vehicles are usually registered as private vehicles, but with the permission to carry passengers for a fee or reward. They do not fall under the category of public service vehicles (PSV), which are meant for general public hire, such as taxis, buses, or auto-rickshaws.
- **Not for Public Hire**: Unlike commercial transport vehicles, private service vehicles are not available for hire by the general public and usually serve a specific group of individuals or a particular organization.
- **Legal Provisions:** Section 2(35) of the Motor Vehicles Act, 1988: It distinguishes between a "private service vehicle" and a "public service vehicle."
- **Registration and Permit**: For a vehicle to be used as a private service vehicle, the owner must obtain the necessary registration and permit from the concerned authorities, specifying that the vehicle is for private service use.

Examples of Private Service Vehicles:

a. Employee transport buses or vans used by companies to transport employees to and from the workplace.
b. Vehicles used by private organizations to transport people for specific events, tours, or services.
c. Personal vehicles used for private family transportation, but when used for specific services like carpooling for employees.

A private service vehicle under the Motor Vehicles Act, 1988, is a vehicle used to carry passengers for private or non-commercial purposes, often for a fee, but it is not part of public transport systems. These vehicles are distinct from public service vehicles and must adhere to the legal requirements for registration and permits under the Act.

iv. Public Service Vehicle

A Public Service Vehicle (PSV), as defined under the Motor Vehicles Act, 1988, is a vehicle that is used to transport passengers or goods for hire or reward, and it is available for public use. These vehicles are typically engaged in providing transport services to the general public, either for a fee or fare. They include vehicles such as buses, taxis, auto-rickshaws, and other commercial vehicles used for public transport.

Definition under the Motor Vehicles Act, 1988: As per Section 2(35) of the Motor Vehicles Act, 1988, a public service vehicle is defined as any motor vehicle used for the carriage of passengers or goods for hire or reward. These vehicles are intended to operate for the public and are subject to specific regulations and permits.

Key Features of Public Service Vehicles:

- **For Public Use:** PSVs are available for public hire and provide transport services to the general public. This distinguishes them from private vehicles, which are not available for hire by the public.
- **Types of PSVs:**
  - **Buses:** Vehicles that carry a large number of passengers, such as city buses, intercity buses, or interstate buses.
  - **Taxis:** Vehicles that provide on-demand transport for passengers.
  - **Auto-rickshaws**: Three-wheeled vehicles commonly used for short-distance public transport.
  - **Vans or Mini-buses:** Often used for shared passenger transport, such as in the case of school buses or shared taxis.
- **Commercial Operation**: Unlike private vehicles, public service vehicles are used for commercial purposes. They are involved in the business of transporting passengers or goods for compensation.
- **Regulated by Authorities**: PSVs are subject to stringent government regulations. The owners or operators must obtain the necessary permits and licenses from the relevant transport authorities to operate legally.

Legal Provisions and Requirements:

1. **Permit Requirement**: As per Section 66 of the Motor Vehicles Act, 1988, a permit is required to operate a public service vehicle. The permit is issued by the concerned transport authority and specifies the route, type of service, and area of operation.
2. **Fitness and Safety Standards:** Public service vehicles are subject to various fitness tests, regular inspections, and safety requirements to ensure that they are safe for use by the general public.
3. **Types of Permits:**
    - **Stage Carriage Permit**: Issued for buses or vehicles carrying passengers on specific routes with scheduled stops.
    - **Contract Carriage Permit:** Issued for vehicles that are hired for specific journeys, such as taxis or rented buses.

Examples of Public Service Vehicles:

- **City Buses**: Providing regular, scheduled services within cities.
- **Intercity Buses:** Long-distance buses transporting passengers between cities or states.
- **Taxis:** Available for hire on demand, providing transportation for individuals or small groups.
- **Auto-rickshaws**: Common in many urban and semi-urban areas, providing short-distance transport.

A public service vehicle (PSV) under the Motor Vehicles Act, 1988, is a vehicle used for transporting passengers or goods for hire or reward and is available for public use. These vehicles play a crucial role in public transport systems and are heavily regulated to ensure safety, accessibility, and fairness in the services they provide. The operation of PSVs requires permits, adherence to safety standards, and compliance with transport regulations.

v. Light Motor Vehicle

A Light Motor Vehicle (LMV) is defined under the Motor Vehicles Act, 1988 as a vehicle that is primarily designed for the transportation of passengers or goods and has a weight of up to 3,500 kg (gross vehicle weight). LMVs are commonly used for personal or commercial transport.

Key Characteristics of Light Motor Vehicles:

1. **Weight:** The gross weight (including the vehicle's body, engine, and maximum load) does not exceed 3,500 kg.
2. **Purpose:** These vehicles are typically used for transporting small numbers of passengers or goods. Examples include cars, motorcycles, and small vans.
3. **Types:**
    - Passenger vehicles: Such as cars, SUVs, and hatchbacks.
    - Two-wheelers: Such as motorcycles and scooters.
    - Commercial vehicles: Such as small vans or light trucks used for local delivery.

Importance:

- **Personal and Commercial Use:** LMVs are widely used for personal transportation (e.g., family cars) and small-scale commercial purposes (e.g., delivery vans).
- **Regulations:** Vehicles falling under this category are subject to specific licensing and regulatory requirements under the Motor Vehicles Act for safety, emissions, and roadworthiness.

Hence, a Light Motor Vehicle is any vehicle with a gross weight of up to 3,500 kg, used for carrying passengers or goods.